

Stephen E. Hessler, P.C.  
Chad J. Husnick, P.C.  
Jennifer Levy (admitted *pro hac vice*)  
AnnElyse Scarlett Gains  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Thomas M. Farrell (admitted *pro hac vice*)  
K. Elizabeth Sieg (admitted *pro hac vice*)  
Joseph Florczak (admitted *pro hac vice*)  
**MCGUIREWOODS LLP**  
800 East Canal Street  
Richmond, Virginia 23219  
Telephone: (804) 775-1000

*Co-Counsel for Navient Solutions, LLC*

*Co-Counsel for Navient Solutions, LLC*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	
	)	Chapter 11
	)	
NAVIENT SOLUTIONS, LLC,	)	Case No. 21-10249 (MG)
	)	
Putative Debtor.	)	
	)	

**DECLARATION OF STEPHEN E. HESSLER IN SUPPORT OF NAVIENT’S  
MOTION FOR ATTORNEYS’ FEES AND COSTS PURSUANT TO 11 U.S.C. § 303(i)**

Stephen E. Hessler hereby declares under penalty of perjury pursuant to section 1746 of title 28 of the United States Code:

1. I am the president of Stephen E. Hessler, P.C., a partner of the law firm of Kirkland & Ellis P.C., located at 601 Lexington Avenue, New York, New York 10022, and a partner of Kirkland & Ellis International, LLP (together with Kirkland & Ellis LLP, collectively, “Kirkland”). I am an attorney admitted to practice before this Court, and am one of the lead attorneys representing Navient Solutions, LLC (“Navient”), the putative debtor in the above-captioned and dismissed involuntary chapter 11 case (the “Involuntary Case”). I submit this declaration in support of Navient’s *Motion for Attorneys’ Fees and Costs Pursuant to*

*11 U.S.C. § 303(i)* (the “Motion”) filed contemporaneously herewith.<sup>1</sup> The exhibits referenced in the Motion and attached as appendices hereto are true and correct to the best of my knowledge.

2. Below is a list of the Exhibits:

**Document**

- |                  |   |
|------------------|---|
| <b>Exhibit A</b> | Summary of Attorneys’ Fees and Costs of Kirkland & Ellis LLP for Legal Services Rendered Through March 24, 2021.                  |
| <b>Exhibit B</b> | Summary of Attorneys’ Fees and Costs of McGuireWoods LLP for Legal Services Rendered Through February 28, 2021.                   |
| <b>Exhibit C</b> | Transcript of Motion to Dismiss Hearing, <i>In re Navient Solutions, LLC</i> , No. 21-10249 (MG) (Bankr. S.D.N.Y. Feb. 25, 2021). |

New York, New York  
Dated: March 29, 2021

/s/ Stephen E. Hessler

As President of Stephen E. Hessler, P.C., as  
Partner of Kirkland & Ellis LLP, and as  
Partner of Kirkland & Ellis International LLP

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

**Exhibit A**

**Summary of Attorneys' Fees and Costs  
of Kirkland & Ellis LLP for Legal Services Rendered Through March 24, 2021**

**KIRKLAND & ELLIS LLP**

AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue  
New York, NY 10022

FEIN 36-1326630

March 29, 2021

Navient Solutions, LLC  
13865 Sunrise Valley Drive  
Suite 110  
Herndon, VA 20171

Attn: Mark Heleen

**Invoice Number: 1050042184**  
**Client Matter: 17194-29**

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**In the Matter of Involuntary Petition SDNY**

For legal services rendered through March 24, 2021 (see attached Description of Legal Services for detail)	\$ 524,050.80
For expenses incurred through March 24, 2021 (see attached Description of Expenses for detail)	<u>\$ 2,903.54</u>
Total legal services rendered and expenses incurred	\$ 526,954.34

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**Summary of Hours Billed**

<b><u>Name</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Amount</u></b>
Julia R. Foster	39.80	390.00	15,522.00
AnnElyse Scarlett Gains	101.30	1,185.00	120,040.50
Susan D. Golden	8.00	1,220.00	9,760.00
Stephen E. Hessler, P.C.	33.50	1,695.00	56,782.50
Chad J. Husnick, P.C.	45.60	1,695.00	77,292.00
Elizabeth Helen Jones	122.80	765.00	93,942.00
Jennifer Levy, P.C.	5.30	1,396.00	7,398.80
Trudy Smith	43.40	995.00	43,183.00
Alex Warso	84.30	875.00	73,762.50
Carole Michelle Wurzelbacher	26.50	995.00	26,367.50
<b>TOTALS</b>	<b>510.50</b>		<b>\$ 524,050.80</b>

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**Description of Legal Services**

<b><u>Date</u></b>	<b><u>Name</u></b>	<b><u>Hours</u></b>	<b><u>Description</u></b>
02/10/21	Julia R. Foster	1.50	Circulate recently filed Navient pleadings; draft Navient notice of appearances for S. Hessler, C. Husnick, A. Gains, and J. Levy; draft Navient pleading template.
02/10/21	AnnElyse Scarlett Gains	9.00	Review amended pleadings; summarize re same; correspond and conference with K&E team re same; initiate outline and draft of motion to dismiss; analyze research and background information re same; conference and correspond with K&E team, McGuireWoods team re same.
02/10/21	Susan D. Golden	0.50	Teleconference with S. Hessler, C. Husnick, and A. Gains re involuntary case; follow up with A. Gains re same.
02/10/21	Stephen E. Hessler, P.C.	4.50	Telephone conferences and correspond with K&E team re involuntary filing and work in process; telephone conference with K&E team and McGuireWoods re same.
02/10/21	Chad J. Husnick, P.C.	2.50	Correspond and conference with K&E team, client re involuntary filing and next steps.
02/10/21	Elizabeth Helen Jones	5.60	Telephone conference with A. Gains, K&E team re motion to dismiss; compile summary of involuntary petition rules; draft sections of motion to dismiss; research case law on sanctions/damages.
02/10/21	Jennifer Levy, P.C.	1.50	Background review, research, and telephone conference with client and K&E team re involuntary petition.
02/10/21	Trudy Smith	2.40	Telephone conference and correspond with K&E team re involuntary petition and motion to dismiss work streams; read and analyze involuntary petition; review background materials re same.
02/10/21	Carole Michelle Wurzelbacher	6.50	Draft motion to dismiss involuntary chapter 11; telephone conference with A. Gains and K&E team re same; research re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/11/21	Julia R. Foster	5.50	Research re Motion for Emergency Hearing; shell pleadings re same; revise notice of appearances; revise pro hac vice motion; research re corporate ownership statement; draft re same; shell motion requesting costs; revise Motion to Dismiss; research precedent re notices to show cause; draft re same; review and cite check motion to dismiss.
02/11/21	AnnElyse Scarlett Gains	8.80	Review amended pleadings; summarize re same; correspond and conference with K&E team re same; draft and revise motion to dismiss; correspond and conference with K&E team, McGuireWoods team, client re same.
02/11/21	Susan D. Golden	0.50	Correspond with Judge Glenn's chambers re filing responsive pleadings; call with US Trustee; correspond with K&E team re same.
02/11/21	Stephen E. Hessler, P.C.	3.50	Telephone conferences and correspond with K&E team re assistance; review draft outline of Motion to Dismiss; telephone conferences and correspond with K&E team re same; telephone conference and correspond with K&E team and Company re filing.
02/11/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team, client re involuntary filing and next steps.
02/11/21	Elizabeth Helen Jones	6.70	Draft motion to dismiss; research case law on damages; research case law on bad faith; draft corporate ownership statement; revise re same; correspond with A. Gains re motion to exceed page limits; draft re same; telephone conference with K&E team, A. Gains re case status.
02/11/21	Jennifer Levy, P.C.	0.80	Calls with client and K&E team re fact investigation, corporate structure and strategy issues.
02/11/21	Trudy Smith	9.70	Research case law re abstention; draft motion to dismiss section re same; correspond with K&E team re same; telephone conference with K&E team re status; telephone conference with S. Golden re motion to show cause; review and analyze bankruptcy rules re emergency relief; correspond and telephone conference with A. Gains re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/11/21	Alex Warso	9.90	Draft, revise motion to dismiss; research, analyze case law re same; analyze issues re standard of dismissal; telephone conference with K&E team re same; correspond with J. Foster re citations.
02/11/21	Carole Michelle Wurzelbacher	8.50	Review, revise motion to dismiss; research re same; correspond with A. Gains and K&E team re same.
02/12/21	Julia R. Foster	1.20	Correspond with printing/courier vendor re service; correspond with A. Gains re filing; draft Hessler Declaration in support of Motion to Dismiss; review and revise pleadings.
02/12/21	AnnElyse Scarlett Gains	10.00	Review pleadings; correspond and conference with K&E team re same; draft and revise motion to dismiss; correspond and conference with K&E team, McGuireWoods team, client re same; attend strategy call with client.
02/12/21	Chad J. Husnick, P.C.	2.00	Review and revise motion to dismiss; correspond and conference with K&E team, client re same.
02/12/21	Elizabeth Helen Jones	3.20	Correspond with A. Gains re motion to dismiss; revise same.
02/12/21	Trudy Smith	6.90	Draft verified declaration re appendices to motion to dismiss; correspond with K&E team re documents cited in motion; compile documents; revise motion to dismiss re company's financial position; read and analyze financial report as of Dec. 2020; correspond with K&E team re same; draft order and declaration re show cause; telephone conference and correspond with A. Gains re same; review motions to dismiss comments.
02/12/21	Alex Warso	8.80	Review, analyze background materials; revise motion to dismiss re same; research, analyze case law, precedent re same; draft summaries re motion to dismiss.
02/12/21	Carole Michelle Wurzelbacher	6.60	Review, revise motion to dismiss; research re various issues re same; correspond with A. Gains and K&E team re same.
02/13/21	AnnElyse Scarlett Gains	3.40	Review, revise motion to dismiss; correspond with K&E team re same.



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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/13/21	Stephen E. Hessler, P.C.	2.20	Telephone conference and correspond with K&E team re corporate ownership statement and documents to be filed; telephone conferences and correspond with K&E team and Company re work in process.
02/13/21	Chad J. Husnick, P.C.	1.50	Review and revise motion to dismiss; correspond and conference with K&E team re same.
02/13/21	Elizabeth Helen Jones	4.50	Revise motion to dismiss; correspond with A. Gains re same.
02/13/21	Trudy Smith	2.20	Read and analyze case law re automatic stay and sanctions.
02/13/21	Alex Warso	0.20	Correspond with A. Gains re transcript analysis, citation; analyze issue re same.
02/14/21	AnnElyse Scarlett Gains	3.60	Review, revise motion to dismiss; correspond with K&E team and McGuireWoods Team re same.
02/14/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re motion to dismiss research issues.
02/14/21	Elizabeth Helen Jones	1.80	Compile list of pending litigations re Navient and issues raised in involuntary petition; revise motion to dismiss; correspond with A. Gains re same.
02/14/21	Trudy Smith	5.10	Research re automatic stay in other pending bankruptcy matters involving petitioners; draft analysis re same; correspond with K&E team re same.
02/14/21	Alex Warso	0.20	Revise status conference reference; correspond with A. Gains re same.
02/15/21	AnnElyse Scarlett Gains	8.70	Review, revise motion to dismiss; correspond and conference with K&E team and McGuireWoods team re same; review information and documents re same.
02/15/21	Stephen E. Hessler, P.C.	2.50	Telephone conference and correspond with K&E team re Motion to Dismiss.
02/15/21	Chad J. Husnick, P.C.	3.00	Review and revise motion to dismiss and related documents; correspond and conference with K&E team, client re same; telephone conference with A. Gains re same.
02/15/21	Elizabeth Helen Jones	5.30	Correspond with A. Gains re motion to dismiss; revise re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/15/21	Trudy Smith	3.40	Revise verified declaration re Motion to Dismiss and correspond with K&E team re same; compile exhibits; read revised motion to dismiss.
02/15/21	Alex Warso	11.20	Draft motion to redact; correspond with A. Gains re same; review, analyze factual issues re evidentiary support; correspond with A. Gains re same; revise dismissal motion re same; correspond with J. Urban re video support; review, analyze precedent re sealing motions; analyze local rules, bankruptcy rules, chambers guidelines re same; telephone conference with E. Jones re case updates, outstanding items.
02/16/21	Julia R. Foster	0.30	Research re Judge Glenn procedures.
02/16/21	AnnElyse Scarlett Gains	2.90	Review, revise motion to dismiss; correspond and conference with client and K&E teams re same; review information and documents re same.
02/16/21	Stephen E. Hessler, P.C.	0.70	Telephone conference and correspond with K&E team re Navient case update.
02/16/21	Chad J. Husnick, P.C.	3.50	Review and revise motion to dismiss and related documents; correspond and conference with K&E team, client re same; correspond and conference with A. Gains re same.
02/16/21	Elizabeth Helen Jones	5.80	Revise motion to dismiss; correspond with A. Gains re same; research outstanding issues re same; revise corporate ownership statement.
02/16/21	Jennifer Levy, P.C.	0.50	Review draft motion to dismiss involuntary petition; confer with K&E team re strategy issues re same.
02/16/21	Trudy Smith	0.50	Revise verified declaration and correspond with K&E team re same.
02/16/21	Alex Warso	1.10	Revise redaction motion; correspond with A. Gains re same; review, analyze revised pleadings re filing preparations; correspond with K&E team re same.
02/17/21	Julia R. Foster	7.90	Prepare materials for filing; prepare notice of appearances and pro hac vice motions for filing; review and revise pleadings; prepare binder materials for service; correspond with printing/courier vendor re filings; file pleadings.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/17/21	AnnElyse Scarlett Gains	11.30	Review, revise motion to dismiss; correspond and conference with teams re same; review information and documents re same.
02/17/21	Susan D. Golden	1.00	Call with A. Gains re Motion to Dismiss and requests for Judge Glenn's chambers; correspond and call with D. Anderson of Judge Glenn's chambers re same; review and revise Motion to Shorten Time for hearing and correspond with A. Warso re same.
02/17/21	Stephen E. Hessler, P.C.	1.50	Telephone conference and correspond with K&E team re Motion to Dismiss; telephone conference and correspond with K&E team re timeline.
02/17/21	Chad J. Husnick, P.C.	3.50	Review and revise motion to dismiss and related documents; correspond and conference with K&E team, client re same.
02/17/21	Elizabeth Helen Jones	9.20	Revise motion to dismiss; revise corporate ownership statement; correspond with A. Gains re same; prepare same for filing; prepare all filed documents for service; correspond with T. Smith re Hessler Declaration.
02/17/21	Trudy Smith	7.40	Compile exhibits for verified declarations; telephone conferences with K&E team re same; revise verified declarations; review redactions; revise motion to dismiss; correspond with K&E team re verified declaration; prepare filing version of the same.
02/17/21	Alex Warso	9.30	Revise, finalize pleadings re motion to dismiss; draft motion to shorten notice; telephone conference, correspond with A. Gains re same; correspond with J. Foster, A. Gains, K&E team re service, filing, information dissemination; correspond with J. Foster, K&E team re A/V exhibits, materials; correspond with E. Jones re same, service, finalization of pleadings.
02/17/21	Carole Michelle Wurzelbacher	0.80	Draft talking points for motion to dismiss; correspond with K&E team re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/18/21	Julia R. Foster	4.40	Revise notice of hearing; file re same; revise pleadings caption; correspond with courier re delivery of pleadings; coordinate CourtSolutions line re February 25, 2021 hearing; draft certificate of service re February 17, 2021 filings; prepare digital materials for filing; correspond with K&E team re service.
02/18/21	AnnElyse Scarlett Gains	4.30	Correspond and conference with K&E and client team re motion to dismiss, letter from Smith, service, next steps; review and analyze re same.
02/18/21	Susan D. Golden	1.50	Review petitioning creditors letter response to Motion to Dismiss and correspond with C. Husnick, S. Hessler, A. Gains re response to same; call with A. Gains re submission of audio/video exhibits to chambers and correspond with Judge Glenn's chambers re same; call with J. Mercado and T. George of Bankruptcy Court re procedure for filing audio and video files.
02/18/21	Stephen E. Hessler, P.C.	0.50	Telephone conference and correspond with K&E team re Navient letter requesting Summary Judgment.
02/18/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team, client re motion to dismiss and hearing re same.
02/18/21	Elizabeth Helen Jones	5.80	Draft certificates of services; serve additional filings; correspond with A. Gains re same; correspond with Court re filing of electronic media; correspond with S. Golden re same.
02/18/21	Trudy Smith	0.20	Review correspondence from K&E team re filings.
02/18/21	Alex Warso	3.90	Analyze case law re Smith letter to court; correspond with A. Gains, K&E team re same; correspond with A. Gains, S. Golden, J. Foster, E. Jones re service; revise electronic media PDF; coordinate filing re same.
02/19/21	Julia R. Foster	1.30	Correspond with K&E team re digital materials; revise certificate of service re Navient pleadings; prepare certificate of service for filing; file certificate of services.
02/19/21	Julia R. Foster	0.40	Prepare binder materials re February 25, 2021 hearing.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/19/21	AnnElyse Scarlett Gains	1.50	Correspond and conference with teams re motion to dismiss, service re same, letters to chambers; review, analyze re same.
02/19/21	Susan D. Golden	0.50	Correspond with V. Genna and D. Anderson re filing protocols for audio files; coordinate transcription re same.
02/19/21	Chad J. Husnick, P.C.	0.30	Correspond and conference with K&E team, client re motion to dismiss and hearing re same.
02/19/21	Elizabeth Helen Jones	4.50	Prepare binder for C. Husnick re February 25, 2021 hearing preparation; compile pleadings and case law re same; correspond with A. Warso, J. Foster re same; draft talking points re motion to dismiss.
02/19/21	Trudy Smith	0.70	Draft talking points re abstention; correspond with K&E team re same; review filed motion to dismiss re same.
02/19/21	Alex Warso	4.90	Draft, revise dismissal talking points; correspond with A. Gains, K&E team re same; correspond with S. Golden, Veritext re multimedia sources.
02/19/21	Carole Michelle Wurzelbacher	1.50	Review, revise motion to dismiss talking points; correspond with K&E team re same.
02/20/21	Susan D. Golden	0.50	Review transcribed audio; correspond with A. Warso and Veritext re same.
02/20/21	Elizabeth Helen Jones	1.30	Draft talking points for motion to dismiss; correspond with A. Warso re same.
02/20/21	Alex Warso	7.70	Draft, revise talking points re motion to dismiss; correspond with A. Gains, K&E team re same; review, analyze case law re same; analyze pleadings re key admissions, open items; correspond with A. Gains, K&E team re review materials; correspond with S. Golden, transcriber re finalization of transcripts.
02/21/21	Julia R. Foster	0.90	Prepare S. Hessler Declaration for filing; file re same.
02/21/21	AnnElyse Scarlett Gains	1.00	Correspond and conference with K&E team re next steps, talking points, hearing preparation.
02/21/21	Susan D. Golden	0.50	Review and revise Hessler Declaration re transcribed audio and video exhibits; correspond with A. Warso re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/21/21	Chad J. Husnick, P.C.	4.00	Correspond and conference with K&E team re hearing re motion to dismiss; review and analyze materials re hearing preparation.
02/21/21	Elizabeth Helen Jones	2.60	Prepare service of Hessler Declaration; serve Hessler Declaration; draft summaries of Petitioners; correspond with A. Gains re same.
02/21/21	Alex Warso	1.10	Draft, revise Hessler declaration; finalize transcripts re same; correspond with S. Golden, A. Gains, K&E team re same.
02/21/21	Carole Michelle Wurzelbacher	0.60	Draft talking points for motion to dismiss; correspond with K&E team re same.
02/22/21	Julia R. Foster	0.60	Compile recently filed pleadings for K&E team review; coordinate CourtSolutions lines for S. Hessler.
02/22/21	AnnElyse Scarlett Gains	2.80	Conference and correspond with K&E team and McGuireWoods team re objection, hearing preparation, talking points; review, analyze same.
02/22/21	Stephen E. Hessler, P.C.	0.80	Telephone conference and correspond with K&E team re Letter of Extension; telephone conference and correspond with K&E team re Objection; telephone conference and correspond with K&E team re work in progress.
02/22/21	Chad J. Husnick, P.C.	4.00	Prepare for hearing re motion to dismiss; review and analyze pleadings, preparation materials re same; correspond and conference with K&E team, client, co-advisors re same.
02/22/21	Elizabeth Helen Jones	6.30	Revise summaries of petitioners; correspond with A. Gains, McGuireWoods team re same; telephone conference with same re Crocker decision; draft summary of Crocker decision; revise re same; revise talking points re motion to dismiss; correspond with A. Warso re same.
02/22/21	Trudy Smith	3.90	Revise talking points re comments received; correspond with K&E team re same; review motion to dismiss, verified declaration re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/22/21	Alex Warso	9.30	Revise talking points; correspond with A. Gains, K&E team re same; correspond with C. Husnick, K&E team re same; analyze comments, outline re hearing preparation; research, analyze case law re same.
02/22/21	Carole Michelle Wurzelbacher	0.70	Review, revise motion to dismiss talking points.
02/23/21	Julia R. Foster	6.40	Draft February 25, 2021 hearing agenda; compile recently filed pleadings; prepare certificate of service for filing; file re same; correspond with K&E team re February 25, 2021 hearing; prepare materials for February 25, 2021 hearing.
02/23/21	AnnElyse Scarlett Gains	7.40	Correspond and conference with K&E team, McGuireWoods team re hearing preparation, objection deadlines, motion to dismiss, joinder; review, analyze same.
02/23/21	Susan D. Golden	1.00	Correspond with K&E team re Joinder filing; correspond with D. Anderson of Judge Glenn's chambers re filed pleadings; review and revise agenda.
02/23/21	Stephen E. Hessler, P.C.	3.50	Telephone conference and correspond with K&E team re extension request; telephone conference and correspond with K&E team re joinder; telephone conference and correspond with K&E team re status update; telephone conference and correspond with K&E team re Hearing Agenda.
02/23/21	Chad J. Husnick, P.C.	3.50	Prepare for hearing re motion to dismiss; review and analyze materials re same; correspond and conference with K&E team, client, co-advisors re same.
02/23/21	Elizabeth Helen Jones	6.30	Draft certificate of service; revise hearing agenda; review joinder; research issues re same; correspond with A. Gains, A. Warso re same; revise talking points re same; draft summary outlining joinder issues re same; draft summary of McDaniel decision; research re same.
02/23/21	Trudy Smith	0.30	Read and analyze motion to adjourn hearing on motion to dismiss; correspond with K&E team re same.

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/23/21	Alex Warso	8.30	Revise talking points, hearing draft outline; correspond with A. Gains, C. Husnick re same; analyze case law, precedent re involuntary case; research, analyze case law, treatises re issues raised by joinder; correspond, telephone conference with A. Gains, E. Jones re same.
02/23/21	Carole Michelle Wurzelbacher	0.50	Research re PICAP joinder; correspond with K&E team re same.
02/24/21	Julia R. Foster	4.50	Prepare February 25, 2021 hearing agenda for filing; file re same; correspond with K&E team re February 25, 2021 hearing; file Husnick letter to Judge Glenn; prepare hearing binder materials for S. Hessler; research precedent re dismissal orders; draft dismissal order; prepare certificate of service for filing.
02/24/21	AnnElyse Scarlett Gains	4.50	Prepare for hearing; correspond and conference with K&E and client teams re same; review, revise analysis and research re motion to dismiss hearing.
02/24/21	Susan D. Golden	1.00	Correspond with K&E team re response to PICAP request to adjourn hearing.
02/24/21	Stephen E. Hessler, P.C.	1.50	Telephone conference and correspond with K&E team re adjournment request; telephone conference and correspond with K&E team and Company re case study; telephone conference and correspond with K&E team, Company and McGuireWoods re Involuntary Bankruptcy Petition - Status Update.
02/24/21	Chad J. Husnick, P.C.	5.50	Prepare for hearing re motion to dismiss; review and analyze materials re same; correspond and conference with K&E team, client, co-advisors re same.
02/24/21	Elizabeth Helen Jones	5.70	Correspond with A. Gains, K&E team re letter to the Court; correspond with A. Gains re service; prepare binder for S. Hessler; research McDaniel (10th Circuit) docket; research further joinder issues; prepare service of agenda; serve re same; draft proposed order granting dismissal; correspond with A. Gains, A. Warso re same; revise talking points.



Navient Solutions, LLC

Invoice Number:

1050042184

Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/24/21	Jennifer Levy, P.C.	0.50	Call with K&E team re strategy for response to objections and plan for hearing.
02/24/21	Trudy Smith	0.70	Read letter filing; review and comment on talking points; correspond with K&E team re same.
02/24/21	Alex Warso	5.60	Research, analyze case law re discharge violation claims; correspond, telephone conference with E. Jones re same; correspond with A. Gains re research re joinder issues; revise talking points, oral argument outline; correspond with A. Gains, K&E team re same; correspond with E. Jones, A. Gains re dismissal order; draft, revise same.
02/24/21	Carole Michelle Wurzelbacher	0.80	Review, revise Motion to Dismiss talking points.
02/25/21	Julia R. Foster	2.50	File certificate of service; open CourtSolutions line; attend and assist with February 25, 2021 hearing; circulate entered dismissal order to K&E team.
02/25/21	AnnElyse Scarlett Gains	4.50	Prepare for and attend court hearing; prepare order granting motion to dismiss; correspond and conferences with K&E team, McGuireWoods re same.
02/25/21	Stephen E. Hessler, P.C.	4.00	Telephone conference and correspond with K&E team re Pre-hearing Update Call; attend motion to dismiss hearing; telephone conference and correspond with K&E team re post motion to dismiss Hearing; telephone conference and correspond with K&E team re Dismissal Order.
02/25/21	Chad J. Husnick, P.C.	4.00	Prepare for and attend hearing re motion to dismiss; review and analyze materials re same; correspond and conference with K&E team, client, other advisors re same; review and revise order re motion to dismiss.
02/25/21	Elizabeth Helen Jones	1.10	Revise order granting motion to dismiss; correspond with A. Gains, A. Warso re same; draft summary of hearing; correspond with C. Husnick, A. Gains re same.
02/25/21	Jennifer Levy, P.C.	2.00	Attend motion to dismiss involuntary hearing and conference with client.
02/25/21	Alex Warso	0.30	Revise dismissal order; correspond with A. Gains, E. Jones re same; telephone conference with E. Jones re same.

Navient Solutions, LLC

Invoice Number:

1050042184

Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
02/26/21	AnnElyse Scarlett Gains	1.10	Correspond and conference with K&E and client teams re damages and next steps; analyze re same.
02/26/21	Stephen E. Hessler, P.C.	1.50	Telephone conference and correspond with K&E team re Damages Motion.
02/26/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re damages motion.
02/26/21	Elizabeth Helen Jones	0.50	Telephone conference with A. Gains re damages chart for damages motion; research case law and code re same.
03/01/21	Julia R. Foster	0.80	Correspond with printing/courier vendor re service; correspond with A. Gains re same; circulate February 25, 2021 hearing transcript; save February 25, 2021 hearing transcript to document database; correspond with L. Aasa re docket update.
03/01/21	Chad J. Husnick, P.C.	1.00	Correspond and conference with K&E team re damages motion and next steps; review transcript of hearing re same.
03/01/21	Elizabeth Helen Jones	4.70	Research damages under section 303(i); draft summary chart re same.
03/02/21	Elizabeth Helen Jones	1.30	Revise summary chart of section 303(i) damages; correspond with A. Gains re same.
03/03/21	AnnElyse Scarlett Gains	2.40	Review, revise damages chart; correspond with K&E team re same.
03/03/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re damages motion and next steps.
03/03/21	Elizabeth Helen Jones	2.70	Revise summary chart of damages; correspond with A. Gains re same.
03/04/21	Julia R. Foster	0.80	Research re Crocker, Homaidan, and McDaniel appellate dockets and orders.
03/04/21	Julia R. Foster	0.50	Research re Crocker, Homaidan, and McDaniel bankruptcy orders.
03/04/21	AnnElyse Scarlett Gains	2.00	Correspond and conference with K&E team re damages chart and memorandum; review re same.
03/04/21	Stephen E. Hessler, P.C.	1.50	Telephone conference and correspond with K&E team re damages chart; telephone conference and correspond with K&E team re draft note; telephone conference and correspond with K&E team re damages.

Navient Solutions, LLC

Invoice Number:

1050042184

Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
03/04/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re damages chart, motion, and next steps; review and revise chart re same.
03/04/21	Elizabeth Helen Jones	2.10	Telephone conference with K&E team re damages chart; revise re same; compile pleadings re current pending litigations in Homaidan, Crocker, and McDaniel.
03/05/21	Julia R. Foster	0.30	Review precedent findings re litigation bankruptcy court orders.
03/05/21	AnnElyse Scarlett Gains	1.50	Review, revise damages chart; correspond and conference with K&E team re same.
03/05/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re damages motion and next steps; review and revise chart re same.
03/05/21	Elizabeth Helen Jones	1.50	Revise damages chart; correspond with A. Gains re same; draft motion for damages.
03/08/21	AnnElyse Scarlett Gains	0.70	Correspond with teams re damages next steps; review opinion granting motion to dismiss.
03/08/21	Susan D. Golden	0.50	Telephone conference with A. Gains re outreach to Judge Glenn Chambers; correspond and call with D. Anderson of Judge Glenn chambers re same.
03/08/21	Stephen E. Hessler, P.C.	0.30	Telephone conference and correspond with K&E team re fees, expenses, and damages chart.
03/08/21	Chad J. Husnick, P.C.	0.50	Review and analyze opinion re motion to dismiss.
03/08/21	Elizabeth Helen Jones	1.80	Research re attorneys' fees and costs; correspond with A. Gains re same; review opinion granting motion to dismiss.
03/08/21	Alex Warso	0.40	Analyze, review dismissal opinion; correspond with E. Jones re same.
03/09/21	AnnElyse Scarlett Gains	0.20	Correspond with K&E team re next steps.
03/09/21	Stephen E. Hessler, P.C.	1.00	Telephone conference and correspond with K&E team re strategy; telephone conference and correspond with K&E team re bad faith finding summary.
03/09/21	Elizabeth Helen Jones	1.40	Draft summary re opinion granting motion to dismiss for client; correspond with A. Gains, K&E team re same.
03/10/21	AnnElyse Scarlett Gains	0.20	Correspond with K&E team, McGuireWoods team re extension of deadlines and damages.

Navient Solutions, LLC

Invoice Number:

1050042184

Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

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<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
03/10/21	Stephen E. Hessler, P.C.	1.00	Telephone conference and correspond with K&E team re Bad Faith Opinion.
03/10/21	Chad J. Husnick, P.C.	0.30	Correspond with K&E team, client re A. Smith extension request; research re same.
03/11/21	AnnElyse Scarlett Gains	0.70	Review and analyze letter filings; correspond with K&E team, McGuireWoods team re same.
03/11/21	Stephen E. Hessler, P.C.	1.00	Telephone conference and correspond with K&E team re Navient Opinion.
03/11/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team, client re A. Smith extension request; review response letter re same; review motion to reconsider.
03/11/21	Elizabeth Helen Jones	0.40	Correspond with A. Gains, K&E team re service of letter; serve letter on Chambers.
03/12/21	AnnElyse Scarlett Gains	2.50	Review, analyze filings re motion to reconsider; correspond and conference with K&E team, McGuireWoods team re same.
03/12/21	Susan D. Golden	0.50	Review motion for reconsideration; calls with Judge Glenn's chambers re response; correspond with A. Gains, C. Husnick re same.
03/12/21	Stephen E. Hessler, P.C.	1.00	Telephone conference and correspond with K&E team re Navient Reconsideration Motion.
03/12/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team, client re motion to reconsider; review order denying request re same.
03/12/21	Elizabeth Helen Jones	4.70	Correspond with A. Gains, A. Warso re response to motion to reconsider; research re same; draft outline re same; correspond with A. Gains re motion for fees and costs; draft motion re same.
03/12/21	Alex Warso	2.10	Review, analyze issues re reconsideration reply; correspond with E. Jones, A. Gains re same; analyze counsel multimedia platform, content; research, analyze case law re reconsideration; review order denying reconsideration.
03/14/21	Elizabeth Helen Jones	4.80	Draft motion for attorneys' fees and costs; revise re same.
03/15/21	AnnElyse Scarlett Gains	2.80	Review, revise damages motion; correspond with K&E team re same.

Navient Solutions, LLC

Invoice Number:

1050042184

Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

<u>Date</u>	<u>Name</u>	<u>Hours</u>	<u>Description</u>
03/15/21	Elizabeth Helen Jones	7.10	Draft motion for attorneys' fees and costs; revise re same; correspond with A. Gains re same; review transcript of February 25 hearing; draft Hessler declaration re motion for attorneys' fees and costs; review exhibits re same.
03/16/21	AnnElyse Scarlett Gains	1.80	Review, revise damages motion; correspond and conference with K&E team re same.
03/16/21	Chad J. Husnick, P.C.	0.50	Correspond and conference with K&E team re next steps.
03/16/21	Elizabeth Helen Jones	4.40	Revise motion requesting attorneys' fees and costs; correspond with A. Gains re same; correspond with K&E team re same.
03/17/21	AnnElyse Scarlett Gains	0.80	Correspond with K&E team re damages motion; review re same.
03/17/21	Chad J. Husnick, P.C.	1.00	Correspond with K&E team re damages motion; review and revise re same.
03/17/21	Elizabeth Helen Jones	5.70	Revise motion requesting fees and costs re C. Husnick, A. Gains comments; review February 25 transcript and opinion re same; correspond with K&E team re same.
03/18/21	AnnElyse Scarlett Gains	0.90	Review, revise damages motion; correspond with client and K&E team re same.
03/18/21	Stephen E. Hessler, P.C.	0.50	Telephone conference and correspond with K&E team re damages motion.
03/18/21	Elizabeth Helen Jones	2.90	Revise motion requesting fees and costs re C. Husnick, A. Gains comments; review, revise exhibits to declaration re same; correspond with K&E team re same.
03/19/21	Stephen E. Hessler, P.C.	0.50	Telephone conference and correspond with K&E team re damages motion.
03/19/21	Chad J. Husnick, P.C.	0.50	Review and revise exhibit to damages motion.
03/19/21	Elizabeth Helen Jones	1.10	Review, revise exhibits to Hessler Declaration; correspond with A. Gains re same.
<b>Total</b>		<b>510.50</b>	

Navient Solutions, LLC

Invoice Number:

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Legal Services for the Period Ending March 24, 2021

Matter Number:

17194-29

March 29, 2021

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**Description of Expenses**

<b><u>Description</u></b>	<b><u>Amount</u></b>
Court Reporter Fee/Deposition	526.35
Filing Fees	870.00
Outside Copy/Binding Services	306.83
Outside Printing Services	1,200.36
<b>TOTAL EXPENSES</b>	<b>\$ 2,903.54</b>

**Exhibit B**

**Summary of Attorneys' Fees and Costs  
of McGuireWoods LLP for Legal Services Rendered Through February 28, 2021**



Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

Navient Solutions, LLC  
Accounts Payable  
13865 Sunrise Valley Dr., Suite 110  
Herndon, VA 20171

#### CLIENT

Navient Solutions, LLC

#### MATTER

Involuntary Bankruptcy

### Invoice for Services Rendered Through 02/28/2021

#### FEE SUMMARY

TIMEKEEPER	TITLE	RATE/HR	HOURS	AMOUNT
K. Elizabeth Sieg	Partner	\$720.00	56.7	\$40,824.00
Joseph A. Florczak	Associate	\$639.00	57.6	\$36,806.40
Shawn R. Fox	Counsel	\$913.50	2.3	\$2,101.05
Kaitlyn N. Dmytryszyn	Paralegal	\$261.00	5.3	\$1,383.30
Garnett Lee IV	Other Timekeeper	\$166.50	1.9	\$316.35
Total Fees			123.8	\$81,431.10

#### TASK AND ACTIVITY SUMMARY

TASK - DESCRIPTION	ACTIVITY - DESCRIPTION	HOURS	AMOUNT
L120 - Analysis/Strategy	A104 - Review/analyze	52.2	\$35,628.75
L140 - Document/File Management	A104 - Review/analyze	3.1	\$629.55
L190 - Other Case Assess.Dev. & Admin.	A104 - Review/analyze	3.3	\$861.30
L250 - Other Written Motions & Submiss.	A104 - Review/analyze	54.2	\$36,464.40
L390 - Other Discovery	A104 - Review/analyze	1.0	\$639.00
L440 - Other Trial Prep. & Support	A104 - Review/analyze	4.0	\$2,880.00
L450 - Trial and Hearing Attendance	A104 - Review/analyze	6.0	\$4,328.10
Total Fees		123.8	\$81,431.10

**Invoice Total \$81,431.10**





Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

## Invoice Detail

### FEE DETAIL

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
02/08/2021	K. Elizabeth Sieg	Analysis of petition, review of petitioning creditor bankruptcy filings, research and start work on motion to dismiss	6.4	\$4,608.00
02/08/2021	Joseph A. Florczak	Research defenses to involuntary filing in Second Circuit	6.1	\$3,897.90
02/08/2021	Shawn R. Fox	Emails regarding involuntary bankruptcy case against Navient	0.5	\$456.75
02/09/2021	K. Elizabeth Sieg	Continue analysis of petition, review of petitioning creditor bankruptcy filings, research and work on draft motion to dismiss	5.8	\$4,176.00
02/09/2021	Joseph A. Florczak	Draft, review and revise motion to dismiss involuntary petition	9.5	\$6,070.50
02/09/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings (.2) research ECF noticing procedure for the Southern District of New York bankruptcy court (.2)	0.4	\$104.40
02/10/2021	K. Elizabeth Sieg	Continue analysis of petition, review of petitioning creditor bankruptcy filings, research and work on MTD (8.2) and communications with co-counsel regarding same (1.5)	9.7	\$6,984.00
02/10/2021	Joseph A. Florczak	Draft, review and revise motion to dismiss involuntary proceeding (8.2), correspondence with and calls with KE team (.9)	9.1	\$5,814.90
02/10/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20



Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
02/11/2021	K. Elizabeth Sieg	Continue research, analysis, and revisions to motion to dismiss and borrower/litigation background for co-counsel	4.1	\$2,952.00
02/11/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/12/2021	K. Elizabeth Sieg	Call regarding media inquiries and strategies	0.7	\$504.00
02/12/2021	Joseph A. Florczak	Review and revise motion to dismiss involuntary petition (6.3), emails to KE team regarding status of petitioning creditors and class action cases (1.1)	7.4	\$4,728.60
02/12/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/13/2021	Joseph A. Florczak	Emails with KE team regarding status of class action cases and relationships to involuntary petitions	0.9	\$575.10
02/14/2021	Joseph A. Florczak	Review and revise draft KE motion to dismiss	1.4	\$894.60
02/15/2021	K. Elizabeth Sieg	Continue research, analysis, and revisions to motion to dismiss and borrower/litigation background for co-counsel	3.2	\$2,304.00
02/15/2021	Joseph A. Florczak	Review and revise motion to dismiss and provide supporting data to KE team	7.1	\$4,536.90
02/16/2021	K. Elizabeth Sieg	Continue research, analysis, and revisions to motion to dismiss and borrower/litigation background for co-counsel	7.2	\$5,184.00
02/16/2021	Joseph A. Florczak	Review and revise draft involuntary petition	2.5	\$1,597.50



Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
02/16/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/17/2021	K. Elizabeth Sieg	Continue research, analysis, and revisions to motion to dismiss and borrower/litigation background for co-counsel	8.1	\$5,832.00
02/17/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/17/2021	Kaitlyn N. Dmytryszyn	Draft and review pro hac vice forms for J. Florczak, B. Sieg, and T. Farrell for the involuntary petition case	0.4	\$104.40
02/18/2021	K. Elizabeth Sieg	Research reporter background and other preparations for (1.7) and attend client pre-call (0.3) and call with Business Insider (1.0)	3.0	\$2,160.00
02/18/2021	Joseph A. Florczak	Research Austin Smith social media postings for information in support of motion to dismiss involuntary proceeding	1.0	\$639.00
02/18/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/18/2021	Kaitlyn N. Dmytryszyn	Review and index Tate call recordings and produce to KE counsel	0.3	\$78.30
02/18/2021	Kaitlyn N. Dmytryszyn	Draft and revise pro hac vice proposed orders for K. Sieg, T. Farrell, and J. Florczak in the involuntary petition case	0.3	\$78.30
02/19/2021	Joseph A. Florczak	Review materials in preparation for hearing on motion to dismiss involuntary case	2.0	\$1,278.00
02/19/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20



Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
02/22/2021	K. Elizabeth Sieg	Attention to follow up questions from client regarding media inquiries	0.9	\$648.00
02/22/2021	Joseph A. Florczak	Research and provide materials to KE in preparation for hearing and (2.1), provide materials for Navient PR staff (1.1)	3.2	\$2,044.80
02/22/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/23/2021	K. Elizabeth Sieg	Work with co-counsel on hearing preparations and borrower/litigation background and merits of Navient's defenses in discharge litigation	4.0	\$2,880.00
02/23/2021	Joseph A. Florczak	Prepare and coordinate with KE team regarding hearing on motion to dismiss involuntary proceeding	1.5	\$958.50
02/23/2021	Kaitlyn N. Dmytryszyn	Register J. Florczak, K. Sieg, and T. Farrell for the upcoming involuntary petition hearing	0.3	\$78.30
02/23/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/24/2021	K. Elizabeth Sieg	Call with co-counsel regarding hearing on Feb 25	0.6	\$432.00
02/24/2021	Joseph A. Florczak	Review joinder and research Public Interest Capital LLC	1.7	\$1,086.30
02/24/2021	Kaitlyn N. Dmytryszyn	Assist S. Fox with hearing registration for the involuntary petition case	0.2	\$52.20
02/24/2021	Kaitlyn N. Dmytryszyn	Attend call with J. Florczak regarding archiving Austin Smith's tweets as exhibits	0.2	\$52.20
02/24/2021	Kaitlyn N. Dmytryszyn	Assist Practice Support with the archiving of all relevant tweets from A. Smith involving Navient	0.8	\$208.80
02/24/2021	Garnett Lee IV	Social media collection of Smith Law Group twitter page	1.9	\$316.35



Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

DATE	TIMEKEEPER	DESCRIPTION	HOURS	AMOUNT
02/25/2021	K. Elizabeth Sieg	Prepare for and attend hearing on motion to dismiss	3.0	\$2,160.00
02/25/2021	Joseph A. Florczak	Prepare for and attend hearing regarding motion to dismiss	4.2	\$2,683.80
02/25/2021	Shawn R. Fox	Attend Involuntary Petition hearings	1.8	\$1,644.30
02/25/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
02/25/2021	Kaitlyn N. Dmytryszyn	Review and complete transcript request form for the February 25 involuntary petition hearing	0.2	\$52.20
02/26/2021	Kaitlyn N. Dmytryszyn	Review recent pleadings in the involuntary bankruptcy case and circulate report on findings	0.2	\$52.20
Total Fees			123.8	\$81,431.10

McGUIREWOODS

Invoice Date: 03/17/2021  
Invoice Number: 92468149  
Matter: 2049501-0177

Navient Solutions, LLC  
Accounts Payable  
13865 Sunrise Valley Dr., Suite 110  
Herndon, VA 20171

**CLIENT**

Navient Solutions, LLC

**MATTER**

Involuntary Bankruptcy

**Remittance**

	AMOUNT
Fees	\$81,431.10
<b>Total Due This Invoice</b>	<b>\$81,431.10</b>

**PAYMENT IN FULL IS DUE PER TERMS OF ENGAGEMENT BY BANK TRANSFER OR CHECK:**

Bank Name:

ABA:

ABA:

Swift Code:

Credit:

Account Number:

Reference:

Invoice #: 92468149

Accounting Contact:

**OR**

**McGuireWoods LLP**

Attn: Accounts Receivable

800 E. Canal Street

Richmond, VA 23219-3916

**Tax ID: 54-0505857**

**Direct invoice or account inquiries to the McGuireWoods Accounts Receivable Helpline at 800-775-2202.**

**Exhibit C**

**Transcript of Motion to Dismiss Hearing,  
*In re Navient Solutions, LLC*, No. 21-10249 (MG) (Bankr. S.D.N.Y. Feb. 25, 2021)**

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 21-10249-mg

4 - - - - - x

5 In the Matter of:

6

7 NAVIENT SOLUTIONS, LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 February 25, 2021

17 10:00 AM

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN



1 HEARING re (Doc ## 14 to 16, 19, 20, 29, 35, 37, 38, 39, 40)  
2 Hearing Using CourtSolutions RE: Expedited Motion to Dismiss  
3 Involuntary Petition and Request for Damages.

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 KIRKLAND & ELLIS LLP

4 Attorneys for the Debtor

5 601 Lexington Avenue

6 New York, NY 10022

7

8 BY: CHAD HUSNICK (TELEPHONICALLY)

9 ANNELYSE GAINS (TELEPHONICALLY)

10 STEPHEN HESSLER (TELEPHONICALLY)

11 JENNIFER LEVY (TELEPHONICALLY)

12

13 MCGUIRE WOODS LLP

14 Attorneys for the Alleged Debtor

15 800 East Canal Street

16 Richmond, VA 232196

17

18 BY: ELIZABETH SIEG (TELEPHONICALLY)

19

20 MCGUIRE WOODS LLP

21 Attorneys for the Alleged Debtor

22 77 W Wacker Drive

23 Chicago, IL 60525

24

25 BY: JOE FLORCZAK (TELEPHONICALLY)

1 MCGUIRE WOODS LLP

2 Attorneys for the Alleged Debtor

3 1345 Avenue of the Americas

4 New York, NY 10105

5  
6 BY: SHAWN FOX (TELEPHONICALLY)

7  
8 LAW OFFICES OF MICHAEL B. WOLK

9 Attorneys for the Joinder Creditor, Public Interest

10 Capital, LLC

11 31 West 34th Street, Suite 7040

12 New York, NY, 10001

13  
14 BY: MICHAEL B. WOLK (TELEPHONICALLY)

15  
16 UNITED STATES DEPARTMENT OF JUSTICE

17 Attorneys for the U.S. Trustee

18 201 Varick Street, Suite 1006

19 New York, NY 10014

20  
21 BY: ANDREA B. SCHWARTZ (TELEPHONICALLY)

1 ALSO PRESENT TELEPHONICALLY:

2

3 SCOTT FLAHERTY

4 MARIA CHUTCHIAN

5 JASON BURGE

6 ELIZABETH JONES

7 JENNIFER LEVY

8 MATT CANTOR

9 STEVEN CHURCH

10 THOMAS FARRELL

11 ALEXANDER GLADSTONE

12 CHARLES MCDONOUGH

13 ANA LUCIA HURTADO

14 ALEX DEFELICE

15 JAY FLEISCHMAN

16 CEZARY PODKUL

17 JEREMY ZWEIG

18 CHRISTOPHER LACCINOLE

19 ELLIOTT STEIN

20

21

22

23

24

25

1 P R O C E E D I N G S

2 CLERK: Good morning. This is Judge Glenn's Court  
3 Deputy, Deanna Anderson. We're going to start the 10:00  
4 hearing in the Navient Solutions case, Case No. 21-10249.

5 Before starting, I just have a few brief  
6 announcements. I wanted to remind the parties that they  
7 need to state their name each time they speak on the Court  
8 record. If you have an electronic device on in the  
9 background, that might interfere with the recording; please  
10 mute it. Also, if you have background noise, please mute  
11 your line until you are ready to speak and then unmute.

12 Mr. Husnick, am I pronouncing your name correctly?

13 MR. HUSNICK: Yes, Madam Clerk.

14 CLERK: Thank you. Can you please give your  
15 appearance for the record.

16 MR. HUSNICK: Sure. Good morning. Chad Husnick  
17 with Kirkland & Ellis, LLP, appearing on behalf of Navient  
18 Solutions, LLC, the alleged debtor.

19 CLERK: Thank you so much. Ms. Gains, please give  
20 your appearance.

21 MS. GAINS: Of course. AnnElyse Gains of Kirkland  
22 & Ellis on behalf of the putative debtor, Navient Solutions.

23 CLERK: Thank you. Mr. Hessler.

24 MR. HESSLER: Good morning. Steve Hessler of  
25 Kirkland & Ellis, also on behalf of Navient. Thank you.

1 CLERK: Thank you. Is anyone else appearing with  
2 live appearance for Kirkland this morning? Is Jennifer Levy  
3 appearing?

4 MS. LEVY: Yes, thank you, Madam Clerk. This is  
5 Jennifer Levy, also from Kirkland & Ellis for Navient, the  
6 putative debtor, Navient Solutions, LLC.

7 CLERK: Thank you so much. All right, we're going  
8 to take appearance from counsel from McGuire Woods now. Ms.  
9 Sieg, am I pronouncing your name correctly?

10 MS. SIEG: That's perfect, I'm here.

11 CLERK: Okay, thank you. Can you please give your  
12 full appearance for the record.

13 MS. SIEG: Absolutely. This is Elizabeth Sieg.  
14 I'm appearing on behalf of the alleged debtor from McGuire  
15 Woods.

16 CLERK: Thank you. Mr. Florczak, is that correct?

17 MR. FLORCZAK: Yes, Madam Clerk. This is Joe  
18 Florczak from McGuire Woods on behalf of the alleged debtor,  
19 Navient Solutions, LLC.

20 CLERK: Thank you. Mr. Fox.

21 MR. FOX: Good morning, Madam Clerk. It's Shawn  
22 Fox from McGuire Woods on behalf of Navient.

23 CLERK: Thank you. Mr. Wolk, is that correct?

24 MR. WOLK: Yes, it is, thank you. Good morning.  
25 This is Michael Wolk of the Law Offices of Michael B. Wolk,

1 P.C., counsel for the joinder creditor, Public Interest  
2 Capital, LLC.

3 CLERK: Thank you. Ms. Schwartz.

4 MS. SCHWARTZ: Ms. Schwartz from the U.S.  
5 Trustee's Office or Ms. Schwartz from McGuire Woods?

6 CLERK: I'm sorry. Andrea Schwartz from the  
7 United States Trustee's Office.

8 MS. SCHWARTZ: I'm kidding, Deanna. Andrea  
9 Schwartz for the U.S. Trustee.

10 CLERK: Thank you, Andrea. Okay, Judge, that's  
11 everyone that we have a live appearance for. We're ready  
12 when you are.

13 THE COURT: All right. Good morning, everybody.  
14 This is Judge Glenn. We're here in Navient Solutions, LLC,  
15 21-10249. This is a hearing in connection with the alleged  
16 debtors' motion to dismiss. The motion to dismiss was filed  
17 at ECF Docket No. 14; it was filed on February 17, 2021.

18 There was also an application to shorten time for  
19 the hearing. The order granting the order to shorten time  
20 and scheduling the hearing is filed at ECF Docket No. 19; it  
21 was entered on February 18, 2021. It set the hearing for  
22 today at 10:00 a.m. It required any response by Monday,  
23 February 22nd at 12:00 noon.

24 On February 22nd at 9:51 a.m., the petitioning  
25 creditors' counsel, Mr. Smith, filed a letter on ECF

1 requesting a five-hour extension of the objection deadline,  
2 stating that, quote, "Counsel is diligently preparing the  
3 opposition, but fears he will be unable to submit a clean  
4 version by noon. Counsel is confident he will be able to  
5 submit a clean version by 5:00 p.m." That letter is ECF  
6 Docket No. 30. The extension was granted the same day at  
7 12:00 p.m. at ECF Docket No. 31.

8 On February 22nd at 5:01 p.m., Mr. Smith filed  
9 another letter on ECF requesting, quote, "A 12-hour  
10 extension on the 5:00 p.m. deadline set forth by this  
11 Court," close quote. That's ECF Docket No. 32.

12 One of my law clerks informed Mr. Smith via email  
13 that same day, February 22nd, at 5:13 p.m. stating that I  
14 had approved the 12-hour extension. Mr. Smith replied to my  
15 law clerk via email the same day at 6:19 p.m. stating,  
16 quote, "Thank you very much," close quote. The request was  
17 formally granted on the docket with a memorandum endorsement  
18 of Mr. Smith's letter on February 23rd at 9:15 a.m.; that's  
19 ECF Docket No. 33.

20 On February 23rd at 10:11 a.m., Mr. Smith filed  
21 yet another letter on ECF stating that he intended to  
22 request a 24-hour extension. His letter stated, in part,  
23 that he sought a 12-hour extension on the 5:00 p.m. deadline  
24 set forth by this Court which amended the scheduling order  
25 of February 18, 2021, ECF No. 20, but intended and hopes



1 opposing counsel understood this request as to read 24  
2 hours. Counsel intends to file papers at 5:00 p.m. and  
3 apologizes for his drafting error; that's in ECF Docket No.  
4 34.

5 That letter request was denied the same day,  
6 February 23rd at 4:10 p.m. with the following, quote, "The  
7 previous memorandum endorsed order stands. Only the 12-hour  
8 extension was granted. No further extension of time has  
9 been or will be granted." That was in all caps; that's in  
10 ECF Docket No. 36.

11 On February 24 at 9:49 a.m., Mr. Smith left a  
12 voicemail for my Courtroom Deputy, Deanna Anderson, asking  
13 to speak with a law clerk and stating, quote, "I had a bit  
14 of a medical issue come up, and I just wanted to ask how  
15 best to proceed with the Court to avoid any sort of further  
16 complications."

17 My Courtroom Deputy, Deanna Anderson, emailed Mr.  
18 Smith the same day at 11:04 a.m. stating that, quote, "Any  
19 request concerning the hearing needs to be filed in writing  
20 and filed on ECF." He's still not filed any response to the  
21 motion to dismiss or anything else on ECF since his last  
22 letter requesting an extension, which was ECF Docket No. 34.

23 So the record should reflect no opposition to the  
24 motion to dismiss or any other supporting papers of any  
25 opposition to the motion to dismiss has been filed by or on

1       behalf of the petitioning creditors.

2               Bear with me just a second, please.

3               On February 23rd, 2021 at ECF Docket 35, Mr. Wolk  
4       filed a, quote, "Joinder in involuntary case pursuant to 11  
5       U.S.C. 303(c) and Rule 1003(b) of the Federal Rules of  
6       Bankruptcy Procedure." On February 23rd -- bear with me --  
7       Mr. Wolk filed a letter to the Court requesting an  
8       adjournment of this hearing; that was filed at ECF Docket  
9       No. 37.

10              On February 24th, 2021 at ECF Docket No. 39, Mr.  
11       Husnick of Kirkland & Ellis filed a letter on the docket  
12       pointing out that my chambers rules, any party requesting an  
13       adjournment must first seek consent of the other parties  
14       involved in the hearing before seeking the adjournment from  
15       the Court.

16              Mr. Wolk had not sought consent from the moving  
17       parties and consent was not given. I would say whether or  
18       not that request, whether Kirkland had agreed to the  
19       consent, I would not have agreed to continue this hearing.

20              The joinder that was filed by Mr. Wolk is not  
21       supported by any evidence or really anything else; it's  
22       pretty bare bones, so we're going to proceed today with the  
23       uncontested motion to dismiss filed by Kirkland and McGuire  
24       Woods at ECF Docket No. 14.

25              Because of what I consider to be the seriousness

1 of this case, I expect I'm going to have counsel proceed,  
2 and I have some questions, but also to explain the basis for  
3 the motion to dismiss this involuntary case. Mr. Husnick,  
4 are you going to begin?

5 MR. HUSNICK: Yes, Your Honor. Thank you for that  
6 introduction.

7 Your Honor, before I dive into the merits of the  
8 motion to dismiss the involuntary petition. It's probably  
9 helpful just to level set on who the Navient putative debtor  
10 is and who it is not.

11 Your Honor, Navient Solutions, LLC, the putative  
12 debtor is a subsidiary of Navient Corporation, a publicly  
13 traded company. The Navient parent, Navient Corporation,  
14 and its subsidiaries are the leader in educational loan  
15 management and business processing solutions for educational  
16 loans.

17 The Navient parent, as I said, is publicly traded  
18 and has significant secured and unsecured debt. And within  
19 the company's businesses, Navient Solutions, which I'll  
20 refer to as Navient, is an entity that services student loan  
21 contracts with various individual buyers.

22 Your Honor, Navient is embroiled in litigation  
23 across the country, as you are more than aware from the  
24 pleadings. That litigation is ongoing in Texas, Colorado,  
25 and in several jurisdictions in New York. Petitioners'

1 counsel is very, very involved in that litigation and, in  
2 fact, has commenced much of that litigation in various  
3 forms. He has reason to know that these claims are  
4 disputed, and that Navient vigorously disputes any of the  
5 alleged claims and the alleged damages.

6 So Navient was surprised when the petitioner  
7 commenced the involuntary proceeding. We were surprised  
8 because we were engaged, Navient was engaged in a court-  
9 approved mediation with, among other parties, Mr. Smith and  
10 certain of his clients. Surprised because in another piece  
11 of litigation pending in the McDaniel case, which is pending  
12 in Colorado, there had recently been an agreed scheduling  
13 order, Your Honor, that set forth deadlines for discovery  
14 and pleading practice and there wasn't to be a trial until  
15 the earliest of 2022.

16 There's no way to misconstrue or stretch the facts  
17 of these underlying litigations in a manner to support the  
18 commencement of an involuntary case. Counsel's disdain for  
19 Navient --

20 THE COURT: Is Mr. Smith involved -- excuse me.  
21 Is Mr. Smith involved in the McDaniel case?

22 MR. HUSNICK: He is, Your Honor. He is the lead  
23 plaintiffs' counsel for the McDaniel's debtors -- oh, sorry  
24 -- the McDaniel situation, and he --

25 THE COURT: He has not withdrawn from that case,

1 has he?

2 MR. HUSNICK: He has not. He withdrew from the  
3 Crocker proceeding, which is -- just to be clear, McDaniel  
4 is not seeking a class to be appointed; Crocker, they have  
5 requested that a class be appointed. And he was counsel to  
6 one of the putative members of the class, but that class has  
7 not yet been certified and he has now withdrawn as counsel  
8 to that potential class.

9 THE COURT: All right, go ahead.

10 MR. HUSNICK: Your Honor, counsel's disdain for  
11 Navient is clear. He writes it in his pleadings, he puts it  
12 in his emails, he tweets it on Twitter, he broadcasts it on  
13 YouTube. You know, what's clear from all of his misses is  
14 that he's at least a zealous advocate for his clients. But  
15 when he filed the involuntary proceeding, when he commenced  
16 an involuntary and tossed an \$84 billion company into  
17 bankruptcy with a facially defective involuntary petition,  
18 he went too far.

19 His intent is clear on the petition in the vitriol  
20 filled pages and his social media posts that followed. This  
21 is the bankruptcy equivalent of a strike suit. There is no  
22 legitimate purpose stated and, in fact, it's the essence of  
23 bad faith. We seek immediate dismissal.

24 THE COURT: Can I ask you before you go on.

25 MR. HUSNICK: Yup.

1 THE COURT: Before you go on, you indicated that  
2 Navient Solutions is a subsidiary of Navient Corporation, a  
3 publicly traded corporation. What is the current market  
4 capitalization of the publicly traded parent company?

5 MR. HUSNICK: It's in excess of \$2.4 billion. And  
6 you can take -- you can take, Your Honor, both from the face  
7 of the Complaint where counsel asserted that there was \$87.4  
8 billion worth of assets reported and \$85 billion worth of  
9 liabilities, and you can get to the \$2.4 billion there on  
10 the face of the Complaint or you could, you know, do the  
11 calculation based on stock trading price.

12 THE COURT: All right.

13 MR. HUSNICK: Your Honor, that takes me to  
14 dismissal. We sought immediate dismissal and damages  
15 associated with the involuntary filing on three bases:  
16 first, Section 303(b); second, 303(h); and third, 305(a).

17 I'll spend most of the time talking about 303(b)  
18 because I think it's the most straightforward and  
19 uncontested argument here, and that is that the claims  
20 asserted in the petitioners' involuntary petition and the  
21 supporting papers are subject to a bona fide dispute and are  
22 contingent as to both liability and amount.

23 There's no dispute at all, Your Honor, that there  
24 are more than 12 creditors here. Indeed, on page 9, the  
25 petitioners aver that there are hundreds of thousands of

1 potential creditors. And so, again on the face of the  
2 Complaint Your Honor -- or the face of the petition Your  
3 Honor can take note that we're in excess of 12 creditors.  
4 As a result, under the statute, the petitioners need to have  
5 at least three qualified and eligible creditors holding in  
6 the aggregate at least \$16,750 that are not subject to a  
7 bona fide dispute as to liability or amount.

8 The claims here, Your Honor, are summarized in a  
9 single sentence on page 9. I'm going to read that sentence.  
10 Quote, "Furthermore, the petitioning creditors are owed  
11 \$45,683.64 in money wrongfully collected from them after  
12 discharge, along with likely more than a billion from  
13 hundreds of thousands of other debtors Navient has defrauded  
14 over the last two decades," end quote.

15 Your Honor, that's the single sentence in the  
16 entire petition and involuntary supplement referring to the  
17 nature of the damages claims that the petitioners are  
18 asserting against Navient Solutions. Your Honor, that's  
19 simply insufficient to sustain their burden.

20 We should go through these individually, and I  
21 will because I think it's very helpful. But it's important  
22 to note that if any one of the individual petitioners failed  
23 and their claim is subject to a bona fide dispute as to  
24 liability or amount, then the petition must fail and it must  
25 be dismissed.

1 Here, I would submit that all three of the  
2 creditors' claims are subject to bona fide dispute. Let me  
3 start with Mrs. Bannister. Mrs. Bannister has five loans  
4 that were issued for attendance at a Title 4 institution.  
5 Ms. Bannister commenced Chapter 7 case in the Southern  
6 District of New York in 2007. She received her discharge in  
7 May of 2010.

8 Important for this litigation, Your Honor, Ms.  
9 Bannister commenced -- reopened her case and commenced an  
10 adversary to seek discharge with respect to these student  
11 loans. She commenced that adversary against Navient and  
12 ultimately prosecuted the adversary. The adversary resulted  
13 in a settlement, and the settlement said that Ms.  
14 Bannister's loan was non-dischargeable.

15 There were concessions made in the context of that  
16 settlement limiting the amount of the loan and reducing it  
17 to \$90,000, setting a 1 percent interest payable over 30  
18 years. That settlement, importantly, was court approved; it  
19 was approved by the Bankruptcy Court in the Southern  
20 District.

21 THE COURT: Let me ask you this, Mr. Husnick.

22 MR. HUSNICK: Yup. Because I've read Judge  
23 Garrity's opinion in the Bannister case; it's reported at  
24 2021 W.L. 219525, signed on January 20th, 2021. Has an  
25 appeal been taken from Judge Garrity's decision?



1 MR. HUSNICK: Not to my knowledge, no.

2 THE COURT: All right. And I have that in front  
3 of me, so I'm familiar with Judge Garrity ruling in that  
4 case. Go on.

5 MR. HUSNICK: We think the failure to -- I'm  
6 sorry, Your Honor.

7 THE COURT: No, go ahead.

8 MR. HUSNICK: Okay. We think the failure of the  
9 petitioners' counsel to mention in the involuntary  
10 supplement that a Court had already ruled that the  
11 stipulation withstood judicial scrutiny and stood is  
12 important fact to disclose, because that at a minimum shows  
13 that it actually may be -- it's beyond just a bona fide  
14 dispute, Your Honor; it's actually wrong, there is not  
15 claim.

16 There's no claim whatsoever, and certainly not a  
17 claim sufficient to satisfy the not subject to bona fide as  
18 to liability or amount standard that is set forth in Section  
19 303(b) of the Bankruptcy Code. As such, we think --

20 THE COURT: Talk about the other two petitioning  
21 creditors and what are their circumstances.

22 MR. HUSNICK: Sure. So Mr. Hood and Mr. Tate are  
23 actually a very similar circumstance to each other, but let  
24 me just briefly talk about. Mr. Hood commenced his Chapter  
25 11 case in Massachusetts; he received his discharge in 2011.

1 There was no adversary commenced in the Hood bankruptcy  
2 proceeding to seek a finding that the loan was  
3 dischargeable, the student loan debt was dischargeable. As  
4 such, the presumption under 523(a)(8) is that his loans were  
5 dischargeable.

6 Where I think this all comes down to, Your Honor,  
7 and what the pending litigation in the various circuits is  
8 about is whether, in fact, there are limitations on the  
9 dischargeability of student loan debt. And I would submit  
10 while certain courts have ruled on particular issues,  
11 they've not ruled on all of the issues.

12 And before I get into that, what issues remain  
13 open and why they're subject to a bona fide dispute, let me  
14 just give you a second on Tate and then I'll tie it all  
15 together.

16 Tate is similar to Hood insofar as Mr. Tate  
17 commenced a bankruptcy proceeding; his proceeding is in the  
18 Northern District of Georgia. He, like Mr. Hood, did not --  
19 excuse me -- like, Mr. Hood, did not commence an adversary  
20 proceeding seeking to challenge the dischargeability of the  
21 loan.

22 THE COURT: When did Mr. Tate file his bankruptcy  
23 case?

24 MR. HUSNICK: June 30th, 2004, Your Honor, in the  
25 Northern District of Georgia.

1 THE COURT: Okay.

2 MR. HUSNICK: No adversary was commenced there. A  
3 general discharge was granted. And Mr. Tate, like Mr. Hood,  
4 asserts a claim for overpayments allegedly made to Navient  
5 on a discharged loan. But there is no loan that is seeking  
6 to discharge; instead, they're relying upon these class  
7 action claims that have been asserted and are in the midst  
8 of litigation to make the bridge.

9 The fundamental premise is that Mr. Tate's claim -  
10 - the fundamental premise of Mr. Tate and Mr. Hood's claim  
11 is that their loans were actually discharged, despite not  
12 having brought an adversary proceeding and despite the fact  
13 that the case was -- the order granting the discharge was  
14 entered.

15 So we think both Tate and Hood are not eligible to  
16 serve as creditors here because any claim they have is based  
17 on this fundamentally false premise that their underlying  
18 student loan debt was discharged.

19 I would anticipate, had we gotten reply papers  
20 from Mr. Smith, that he would have tried to argue that the  
21 Fifth Circuit's decision in Crocker and that the Tenth  
22 Circuit's decision in McDaniel somehow put these claims out  
23 of reach of a bona fide dispute.

24 So I want to talk a little bit about those  
25 decisions. Those decisions definitely resolve --

1 THE COURT: In part, my question -- before you go  
2 on. I mean, McDaniel basically, if I'm reading it  
3 correctly, says 523(a)(8) is inapplicable unless it's an  
4 educational benefit loan. Do you disagree with that?

5 MR. HUSNICK: I think what McDaniel said is that  
6 523(a)(8)(A)(ii) is inapplicable. I agree with that, Your  
7 Honor. The Court did not go on to address a host of other  
8 issues that are being litigated in the underlying case. So  
9 I agree with that the Court decision said, but I think  
10 what's important is what it didn't say.

11 It didn't resolve whether a debtor is  
12 automatically entitled to a discharge or whether it has to  
13 initiate an adversary proceeding. It didn't resolve factual  
14 inquiries as to whether this is a co-borrower situation. It  
15 didn't resolve whether Navient's collection efforts actually  
16 violated the discharge injunction. It didn't resolve  
17 whether the debtor has established that making payments  
18 post-discharge and not the co-borrower, again, another fact  
19 inquiry. It didn't resolve whether the debtor is barred  
20 from receiving a discharge because the loans were obtained  
21 under false pretenses, another affirmative defense asserted  
22 in that litigation. It didn't resolve the laches defense.  
23 And lastly, it certainly didn't resolve the amount of any  
24 alleged overpayment.

25 And so, when you take that in connection with the

1 standard of Section 303(b) that there cannot be a bona fide  
2 dispute as to liability or amount, Your Honor, I would  
3 submit that the McDaniel case, and similarly the Crocker  
4 case, simply do not resolve all of the issues that underlay  
5 this litigation. They resolve one very narrow piece of that  
6 issue, and there a host of factual inquiries that --

7 THE COURT: Would you agree that if 523(a)(8) is  
8 inapplicable that a debtor in a proceeding, in a bankruptcy  
9 proceeding did not have to commence an adversary proceeding  
10 in order to determine that loans that were not educational  
11 benefit loans were discharged. 523(a) would seem to require  
12 the adversary proceeding if it's a loan that's subject to  
13 discharge, but not if it's one of the loans that would not  
14 be subject to a discharge.

15 MR. HUSNICK: Your Honor, I believe that's an  
16 issue that's still being litigated in the underlying  
17 litigation as to whether you have to, because of the  
18 presumption that the Supreme Court articulated in the  
19 Espinoza case, that student loans are presumptively  
20 discharged.

21 And I understand what Your Honor is saying in  
22 terms of how the statute reads and how it works. You know,  
23 I think that that is an issue that is still the subject of  
24 dispute before the lower court in the McDaniel case.

25 THE COURT: Let me -- both McDaniel and Crocker,

1 the Circuit Courts in each case remanded them back to the  
2 Bankruptcy Courts; is that correct?

3 MR. HUSNICK: That is correct, Your Honor. Both  
4 cases were remanded, they were both decided in connection --  
5 they were interlocutory appeals from motions to dismiss on  
6 the very narrow issue, and they were remanded. Indeed, in  
7 the Crocker case, the class has not even yet been certified  
8 and it's been referred to mediation, court-ordered  
9 mediation.

10 THE COURT: In either Crocker or McDaniel, was any  
11 judgment entered against Navient in -- money judgment  
12 entered against either of those cases?

13 MR. HUSNICK: No, no money judgment has been  
14 entered against Navient in either of those cases.

15 THE COURT: Let me ask you to assume for a minute  
16 that -- well, first off, let me ask you what's the case --  
17 because the Second Circuit, there's an expedited appeal or  
18 direct appeal to the Second Circuit from the Eastern  
19 District. Which case is that?

20 MR. HUSNICK: That's the Homaidan case, the  
21 Homaidan litigation.

22 THE COURT: Okay.

23 MR. HUSNICK: It's H-O-M-A-I-D-A-N.

24 THE COURT: Okay.

25 MR. HUSNICK: And that is a similar procedural

1 posture, Your Honor.

2 THE COURT: And what's the status of the Second  
3 Circuit appeal?

4 MR. HUSNICK: My understanding is it has been  
5 fully briefed and they're waiting for oral argument to be  
6 scheduled, Your Honor.

7 THE COURT: And who is the bankruptcy judge there;  
8 was that Judge Craig?

9 MR. HUSNICK: I was waiting for you to get to a  
10 question I couldn't answer, and you might have hit one.

11 THE COURT: Does one of the other counsel for  
12 Navient have the answer to that question?

13 MS. SIEG: Judge, this is Beth Sieg at McGuire  
14 Woods. It's Judge Stahl.

15 THE COURT: Yes, Stahl, okay. All right. And so,  
16 you say it's fully briefed, Mr. Husnick, but not argument  
17 date has been set yet?

18 MR. HUSNICK: That's my understanding, yes, and  
19 Ms. Sieg can confirm that as well because I believe they're  
20 counsel of record.

21 MS. SIEG: That's correct.

22 THE COURT: Okay. When was it fully briefed, Ms.  
23 Sieg?

24 MS. SIEG: It was fully briefed at the very end of  
25 2020.

1 THE COURT: All right. So, Mr. Husnick, assume  
2 for the sake of our discussion that both McDaniel and  
3 Crocker are correct on the merits. They obviously were  
4 decisions -- Tenth Circuit in McDaniel, Fifth Circuit in  
5 Crocker -- but let's assume that they correctly decide the  
6 issue of whether student loans generally are excepted from  
7 discharge rather than just educational benefit loans.

8 So would you agree that -- and let me say -- is  
9 there any circuit court that has ruled to the contrary in a  
10 -- let me ask that again. Has any circuit court in a  
11 reported decision ruled contrary to the Fifth or Tenth  
12 Circuits?

13 MR. HUSNICK: I believe the answer is no.

14 THE COURT: I know there's an issue in the Second  
15 Circuit, opinion not for publication, but I'm talking about  
16 opinions for publication; has any circuit ruled to the  
17 contrary to the Fifth or Tenth Circuits?

18 MR. HUSNICK: I believe the answer is no.

19 THE COURT: All right.

20 MR. HUSNICK: Not on that narrow issue.

21 THE COURT: So are any of the loans of any --  
22 well, let's put -- bear with me again a second. Let's put  
23 Bannister aside because Bannister is in a different posture  
24 because of Judge Garrity's ruling, but let's take Hood and  
25 Tate. Were any of Hood or Tate's loans, student loans that



1 were not educational benefit loans as those terms were used  
2 in Crocker and ...

3 MR. HUSNICK: One of the issues, Your Honor, that  
4 will be litigated ultimately with Mr. Hood and Mr. Tate is  
5 the nature of their loans and whether their loans were  
6 actually provided for Title 4 institutions. And so, a  
7 523(a)(8)(A)(ii) decision, a-la Crocker and McDaniel, is not  
8 dispositive because the other exception, 523(a)(8)(B), may  
9 still be applicable.

10 And then even if you get past that, you know --  
11 and even if you get past that, then you still have to go  
12 through the what's the amount of any such liability, how  
13 much of the loan was actually outstanding, et cetera, and  
14 none of those issues as to that --

15 THE COURT: We'll get to that. Right now, I'm  
16 trying to -- because I have to split it into not disputed as  
17 to liability and then as to amount. But as to liability,  
18 would you agree that liability not be in dispute as to any  
19 loans that foursquare were in the, essentially by the  
20 Crocker and McDaniel decisions?

21 I mean, you don't have to have a decision at every  
22 circuit in the country in order to have under (sound glitch)  
23 as to liability; wouldn't you agree with that?

24 MR. HUSNICK: I agree with you, Your Honor, to  
25 some extent. I agree you don't need a decision in every

1 circuit. Where I think the distinction is here, Your Honor,  
2 is, first, there is -- if you look at the narrow set of  
3 facts that were addressed in Crocker, it was a loan that was  
4 used for a bar exam studies, if I remember correctly.

5 The Tate and Hood cases, that's not the case right  
6 now; those facts have not been borne out. And we still  
7 believe that -- and we being Navient Solutions -- still  
8 believe that we have access to the other subsections of  
9 Section 523(a)(8) and those issues still have not been  
10 resolved. It's not as clean as one would like -- you know,  
11 as the petitioners would like it to be in terms of relying  
12 on Crocker or McDaniel, even if those were adopted by all  
13 the circuits.

14 THE COURT: All right. Go ahead with your  
15 argument; I interrupted you.

16 MR. HUSNICK: No worries, Your Honor. I'm not  
17 sure -- did you need to hear more argument on the scope of  
18 Crocker and McDaniel because it sounds like you are all over  
19 it and understand exactly where we're headed on that front,  
20 which is that those two cases --

21 THE COURT: I'm happy to hear whatever further you  
22 have to say. Look, I haven't decided the issues that were  
23 addressed in Crocker and McDaniel. I've obviously read the  
24 decisions, but I'm certainly happy to hear what other  
25 argument you have about it.

1 MR. HUSNICK: And I think Your Honor could, and I  
2 think it's not the right conclusion, but I think Your Honor  
3 could, if you concluded that the Fifth and Tenth Circuits  
4 are binding law, it still leaves open these very material  
5 issues as to the nature of the underlying Tate and Hood  
6 loan.

7 You can't just assert that our loan was not  
8 qualified under 523(a)(8), not have that issue litigated,  
9 and then turn around and jump into an involuntary  
10 proceeding. That is an issue that should be and must be  
11 resolved in front of the underlying Bankruptcy Court in  
12 Georgia in the case of Mr. Tate and Massachusetts, I  
13 believe, in the case of Mr. Hood.

14 Your Honor --

15 THE COURT: Is every Chapter 7 or Chapter 13  
16 debtor who had student loans that it believes were  
17 discharged in the prior bankruptcy case, are they going to  
18 have (sound glitch) reopen their bankruptcy cases and  
19 litigate every borrower in every case whether they're loans  
20 could be discharged in bankruptcy?

21 MR. HUSNICK: Those are the issues, Your Honor,  
22 that are being dealt with in the -- or that will likely be  
23 dealt with in the context of the class action cases where  
24 class has not yet been certified. But if you look at the  
25 Fifth Circuit's decision in Crocker, the Fifth Circuit said

1 -- actually said, yes, in at least insofar as it could only  
2 be done by a court in the district where the discharge was  
3 issued. It couldn't be a broad sweeping decision by a court  
4 to reopen all of these cases and apply the discharge  
5 injunction in that fashion.

6 That is an issue, again, that the Second Circuit  
7 will likely deal with and may come out on a different side  
8 than what the Fifth Circuit did and we'll have to address  
9 that. But suffice to say, I think those are all issues that  
10 are being firm -- or are squarely being addressed in a non-  
11 bankruptcy fora where it's appropriate for those issues to  
12 be addressed.

13 The PICAP claim, Your Honor --

14 THE COURT: In Crocker, class certification is  
15 being sought at the Bankruptcy Court, correct?

16 MR. HUSNICK: Correct, and the judge is -- that's  
17 being held subject to the mediation right now. But the  
18 Fifth Circuit, you're correct, remanded back to the  
19 Bankruptcy Court to decide on certification of class, but  
20 made clear that the class could only be certified for the  
21 Southern District of New York and not on a more wide base --  
22 or nationwide basis.

23 THE COURT: Not Southern District of New York.

24 MR. HUSNICK: Correct. And certainly not Georgia  
25 and not Massachusetts either; those are two different

1 jurisdictions. Again, the issue of nationwide class  
2 certification is still pending in the Homaïdan litigation,  
3 which again is before the Second Circuit, so that issue is  
4 still open in at least one circuit.

5 Your Honor, the PICAP claim, just briefly, I  
6 believe it's facially problematic because, as you noted in  
7 your opening comments, it's a very bare bones joinder. It  
8 doesn't sufficiently disclose any of the information  
9 required under Section 1003(a) of the Bankruptcy Code when  
10 you file a joinder. And that information, Your Honor, is  
11 relevant for transferred claims because the involuntary  
12 debtor needs to be able to understand who the creditor is  
13 and what is the nature of the claim.

14 Fortunately, if you can read between the lines,  
15 what was filed, you can identify that Mr. Wolk's client is  
16 supposedly the transferee of some claim related to McDaniel.  
17 We're not certain that those types of claims are even  
18 assignable.

19 But setting that issue aside, as I said, there's a  
20 host of open issues that are still being litigated in  
21 McDaniel. Petitioners' counsel, in fact, agreed, as I said  
22 earlier, agreed to a scheduling order just two weeks ago  
23 setting out a discovery schedule and a briefing schedule on  
24 those various threshold issues that have to be resolved  
25 before there could potential be a claim that's not subject

1 to bona fide dispute.

2 Your Honor, therefore --

3 THE COURT: Who was the assignor of the claim to  
4 PICAP; do you know that?

5 MR. HUSNICK: We do not know on the face of their  
6 joinder. Counsel may be able to say.

7 THE COURT: Well, it's not in the pleading; you  
8 agree with that?

9 MR. HUSNICK: It is not in the pleading, and we  
10 searched high and low for it, Your Honor.

11 Even though they filed under 1003(a) to satisfy  
12 those baseline requirements and what were just talking in  
13 our colleague, that's why that requirement exists. We think  
14 that there's also case law that had been adopted most  
15 recently in the Eastern District of Pennsylvania in the  
16 Forever Green Athletic Field v. Dawson case, 514 B.R. 768,  
17 that there can be a bar to joinder for bad faith filing  
18 cases, and we think that is exactly what should be invoked  
19 here on the PICAP claim.

20 But even if, Your Honor --

21 THE COURT: Excuse me. When you refer to Rule  
22 1003 for involuntary petition, 1003(a) requires that a  
23 transferor or transferee of a claim shall annex to the  
24 original in each copy of the petition, a copy of all  
25 documents evidencing the transfer, it goes on from there;

1 that's what you're referring to, right?

2 MR. HUSNICK: That is exactly what I'm referring  
3 to, Your Honor, and that would have allowed us, had they  
4 complied --

5 THE COURT: Your point is, is that the joinder is  
6 facially invalid and ineffective because it didn't comply  
7 with Bankruptcy Rule 1003(a), correct?

8 MR. HUSNICK: That is correct, Your Honor. And  
9 even if you went to the underlying merits, Your Honor, we  
10 believe it suffers from the same deficiencies that the Hood  
11 and Tate claims suffer from. While McDaniel's, we don't  
12 know where that claim is coming from, so we can't actually  
13 address the underlying merits of the nature of the claim,  
14 which is why 1003(a) is there. But we can surmise that it  
15 was an assignment of a claim, in the best case, an  
16 assignment of the McDaniel's claim itself.

17 And as I said though, Your Honor, that is still  
18 subject to active litigation and petitioners' counsel is  
19 knowingly involved in that litigation and is participating.

20 So, Your Honor, we believe that dismissal under  
21 Section 303(b) is warranted, it is justified. And, Your  
22 Honor, all three of the petitioners and the joining  
23 petitioner failed to make the very rudimentary prima facie  
24 case that's required under Section 303(b); that is to have  
25 three claims aggregating more than \$16,750 that are not

1 subject to bona fide dispute as to liability or amount. And  
2 here, they're subject to liability as to both -- subject to  
3 dispute as to liability and amount.

4 The second basis for dismissal, Your Honor, is  
5 Section 303(h) of the Bankruptcy Code. Your Honor, this  
6 one's a little tricky because, of course, we're looking only  
7 at the face of the involuntary petition and what can we  
8 discern from the face of the involuntary petition.

9 Your Honor though, you can look at the cases that  
10 govern the standard under 12(b) for 12(b) motions to  
11 dismiss, the Iqbal and Twombly cases.

12 And you can look at that to say that the Supreme  
13 Court has said when you file a Complaint, in order to  
14 withstand a 12(b)-style motion to dismiss, you must state a  
15 claim, not just rudimentary ticking away the elements, but  
16 you actually just state a plausible claim. You must state  
17 facts that can be reasonably inferred to lead to and support  
18 the claim; that's what the Supreme Court said.

19 Here, petitioners didn't even try to satisfy  
20 Section 303 standard. They didn't make a single assertion  
21 that Navient is not paying its debts as they come due, let  
22 alone generally paying its debts as they come due, that they  
23 made no reference in any of the papers on that topic;  
24 instead, they make bald references to insolvency.  
25 Insolvency is not the standard under Section 303(h). You



1 must show and you must aver in the face of the petition that  
2 the debtor is generally not paying its debts as they come  
3 due. They made no attempt, Your Honor. The focus on  
4 solvency is also deficient.

5 Your Honor, you can't just say somebody's  
6 insolvent in an involuntary petition and toss it into  
7 bankruptcy. That's not what Congress intended when it put  
8 the heavy burden and the heavy responsibility on involuntary  
9 petitioners under Section 303. It's not what Congress  
10 intended.

11 What they did here though, Your Honor, is even  
12 worse. If you actually look at the involuntary supplement,  
13 it undercuts the allegations of insolvency that they made.  
14 They say, Your Honor -- and you asked me about this at the  
15 very opening of my argument, which is what is the market  
16 cap. And they actually comment in their pleading and they  
17 say \$87.5 billion of assets and \$85 billion of liabilities  
18 and that's, I'm assuming, taking from the public filings.

19 Your Honor, that assertion though is then coupled  
20 with the and-oh-by-the-way, you need to deduct \$4 billion  
21 because of these alleged claims, alleged claims there that  
22 they refer to of CFPB. Those claims are also being  
23 litigated and are disputed. There is no judgment that those  
24 amounts are owing.

25 And so, Your Honor, it's not even accurate --

1 THE COURT: Where is that being litigated?

2 MR. HUSNICK: I believe that is being litigated --

3 THE COURT: Where is the CFPB claim being  
4 litigated?

5 MR. HUSNICK: I believe that's being litigated in  
6 the D.C. Circuit, but let me ask Ms. Sieg to weigh in there.

7 THE COURT: Sure. Ms. Sieg, are you able to talk  
8 about the CFPB lawsuit?

9 MS. SIEG: I'm sorry. I was on mute, Your Honor.

10 THE COURT: That's fine.

11 MS. SIEG: We are not counsel for Navient in that  
12 litigation. I believe that it is in the D.C. Circuit, but I  
13 would have to independently confirm to say that for sure.

14 MS. LEVY: Your Honor, this is Jennifer Levy. I  
15 am also counsel for Navient, not in that litigation, but  
16 that is pending in Federal Court in Pennsylvania.

17 THE COURT: Which district in Pennsylvania, do you  
18 know?

19 MS. LEVY: Eastern District.

20 THE COURT: Are you able to tell me what the  
21 status of that case is at the current time?

22 MS. LEVY: I am not counsel in that case, but,  
23 yes, that case is being actively litigated. Summary  
24 judgment has been briefed, summary judgment motions have  
25 been briefed and are pending before the Judge in that

1 litigation; it's before Judge Mariani.

2 THE COURT: I'm sorry, say it again, who is it  
3 before?

4 MS. LEVY: The current status of that litigation  
5 is that summary judgment motions have been briefed and it is  
6 currently pending and awaiting ruling before the Court,  
7 Judge Mariani.

8 THE COURT: Which Judge? Okay. Who filed the  
9 summary judgment motion?

10 MS. LEVY: Both Navient and the CFPB.

11 THE COURT: Okay, cross-motions for summary  
12 judgment.

13 MS. LEVY: That's right.

14 THE COURT: Thank you very much, Ms. Levy.

15 MS. LEVY: You're welcome.

16 THE COURT: All right. Mr. Husnick, back to you.

17 MS. LEVY: Your Honor, I'm sorry. I said Eastern  
18 District of Pennsylvania, but it's Western District of  
19 Pennsylvania.

20 THE COURT: Okay, thank you very much. That was  
21 Ms. Levy who just -- you have to identify yourself each time  
22 you speak.

23 MS. LEVY: Yes, it was. Yes, this is Ms. Levy.

24 THE COURT: Thank you very much, Ms. Levy. All  
25 right, Mr. Husnick, back to you.

1 MR. HUSNICK: Thank you, Your Honor. Chad Husnick  
2 from Kirkland & Ellis on behalf of Navient.

3 Your Honor, because they did not plead the 303(h)  
4 standard that Navient is generally not paying its debts as  
5 they come due, again, the involuntary petition can and must  
6 be dismissed under Section 303(h).

7 The third basis for dismissal, Your Honor --

8 THE COURT: What is it that you've -- let me ask  
9 you this. What is it that you believe would have to be  
10 pleaded to satisfy the 303(h) standard with respect to  
11 generally not paying debtors' debts as they become due?

12 MR. HUSNICK: Your Honor, I think they would have  
13 to make the assertion that the debtor is generally not  
14 paying its debts as they come due, and that those debts that  
15 they're relying on are not subject to bona fide dispute.

16 THE COURT: Well, just --

17 MR. HUSNICK: It basically is a showing that --

18 THE COURT: Stop for a second. It's easy to udder  
19 the words, they're generally not paying the debtors' debts  
20 as they come due; that's a conclusory allegation. What  
21 would a pleading have to include in order to satisfy the  
22 Iqbal pleading requirements with respect to generally not  
23 paying debts as they come due?

24 MR. HUSNICK: Your Honor, I think they would have  
25 to, for example, would have to give examples and oftentimes,

1 the petitioners themselves are the examples. But they can't  
2 do that here because none of their claims are liquidated and  
3 none of their claims are undisputed.

4 And so, what you mostly see when you see an  
5 involuntary petition where they're pleading that the debtor  
6 is not generally paying its debts as they come due is solid  
7 examples in the pleading of a debt that has gone past its  
8 due date, whether it's a trade debt or a loan payment.  
9 That's the involuntary in Caesar's, Your Honor, where a loan  
10 payment had come due, they were in the grace period, and the  
11 assertion was that as a result of that, they were able to  
12 file an involuntary petition.

13 But to make an assertion on a litigation claim  
14 that has not yet been ruled to judgment, it simply doesn't  
15 satisfy the standard. I think I've answered your question,  
16 but I want to be careful that I make sure that I've answered  
17 your question. That was, Your Honor?

18 THE COURT: You can go ahead with your argument.

19 MR. HUSNICK: So the third basis for dismissal,  
20 and I'll be brief on this, Your Honor.

21 THE COURT: Let me interrupt. I apologize, let me  
22 interrupt you for a minute.

23 MR. HUSNICK: Yup.

24 THE COURT: Are there any judgments, unsatisfied  
25 judgments anywhere in any court in the United States --

1 Bankruptcy Court, District Court, whatever -- requiring a  
2 repayment or payment of discharged loans that Navient  
3 collected?

4 MR. HUSNICK: Not to my knowledge, but I can call  
5 on --

6 THE COURT: Has any bankruptcy judge entered a  
7 judgment against them? Are there any judgments against  
8 Navient, dollar amount judgments for the kinds of claims  
9 that are being asserted in litigation as to whether the  
10 loans were discharged or not?

11 MS. SIEG: Judge, this is Beth Sieg at McGuire  
12 Woods.

13 THE COURT: Hold on. I didn't hear your name  
14 clearly, just state your name again if you would.

15 MS. SIEG: Yes, Your Honor. This is Beth Sieg at  
16 McGuire Woods. There are no unsatisfied judgments.

17 THE COURT: Sure, go ahead, Ms. Sieg.

18 MS. SIEG: No unsatisfied judgments, no judgments  
19 of any kind in that nature, Judge.

20 THE COURT: Okay. Thank you very much, Ms. Sieg.

21 MS. SIEG: Thank you.

22 THE COURT: Okay, Mr. Husnick, now you can go on  
23 with your ground.

24 MR. HUSNICK: Okay. The third ground for  
25 dismissal, Your Honor, is Section 305(a). Your Honor, that

1 section puts a lot of discretion in your hands to dismiss  
2 the case where you determine that abstention is in the  
3 interest of creditors and/or the debtor. And here, Your  
4 Honor, we submit that the totality of the circumstances  
5 would support dismissal.

6 All of the factors that are considered, Your  
7 Honor, support dismissal. I want to talk about just a few.  
8 The first factor that many courts consider -- economic use  
9 of judicial assets and efficiency of administration and the  
10 availability of alternative fora for resolution of the  
11 disputes.

12 Here, Your Honor, we're far into litigation.  
13 There have been Circuit Court opinions in that litigation,  
14 there's ongoing mediation in that litigation, and there's a  
15 scheduling order in the Tenth Circuit litigation. It's far  
16 more economical and efficient for the petitioners to pursue  
17 their purported claims in those jurisdictions and not open  
18 an entirely new jurisdiction where we're likely going to  
19 have to sit and wait for those jurisdictions to resolve any  
20 claims anyway.

21 But that takes me to the next point, which is a  
22 bankruptcy is not needed for the equitable distribution of  
23 assets here. There's absolutely no credible concern about  
24 Navient's ability to pay its debts as they come due. You  
25 can't just say it and have it be so that Navient is

1 insolvent or unable to pay its debts as they come due, and  
2 that's why there's such a high burden to file an involuntary  
3 pleading. It's not meant to be a collection proceeding;  
4 it's not meant to be a forum for parties to exert leverage  
5 or to try and extort settlement values. That's just not the  
6 purpose.

7 And that's why I think the last factor and the  
8 factor that most courts that address Section 305(a) find to  
9 be the most persuasive is, why was the filing initiated. We  
10 don't have to look any further than the social media posts  
11 and the vitriol in the pleading to determine that the filing  
12 was initiated in an effort to try and extract a settlement  
13 outside the context of the litigation; that's not what  
14 Chapter 11 is all about. We're about maximizing value for  
15 stakeholders, providing a fresh start, and facilitating the  
16 equitable distribution of the assets. There's simply no  
17 assertion, no credible assertion that that is needed here,  
18 that a bankruptcy is needed.

19 Your Honor, that concludes my argument on the  
20 three bases. I'm happy to answer any other questions you  
21 have. I would reserve on the imposition of damages under  
22 Section 303(i) because I know Your Honor likes to take that  
23 up separately.

24 But the one thing I want to say to you before I  
25 completely wrap up, Your Honor, is the McDaniel and Crocker



1 case, they resolve a narrow issue. There are many other  
2 issues that need to be resolved, and it's simply not --

3 THE COURT: Tell me what you think -- what is the  
4 narrow issue that you believe those cases resolve?

5 MR. HUSNICK: Fifth and Tenth Circuit ruled that a  
6 private loan for a non-Title 4 institution is not covered by  
7 Section 523(a)(8)(A)(ii); that's it. They did not rule that  
8 the Tate loan is a non-Title 4, they did not rule that the  
9 Hood loan is a non-Title 4 loan; that's just not what that  
10 Court decision was about. It did talk about specifics of  
11 the underlying claim -- I forget the individual loan  
12 debtor's name in that case. It did talk about some specific  
13 facts that it used to articulate the standard for what is a  
14 non-Title 4 loan.

15 But we assert, Your Honor, in the pending  
16 litigation that the loans of Mr. Tate and Mr. Hood are Title  
17 4 loans, and that's a threshold issue that would need to be  
18 resolved before any claim could be said to be free from bona  
19 fide dispute.

20 Your Honor, I think the presence of this  
21 litigation, the volume of this litigation puts us squarely  
22 within Your Honor's decision in the TPG Troy case, where  
23 there's a plethora of litigation around that everybody's  
24 aware of and, therefore, Chapter 11, Chapter 7, any  
25 involuntary type petition is not the right place for this

1 company to be right now. It's not the right place, it's not  
2 the purpose of Chapter -- and I hope that Your Honor will  
3 enter an order dismissing the case and letting Navient go on  
4 its way. Thank you.

5 THE COURT: Thank you very much, Mr. Husnick. All  
6 right, no appearance has been made on behalf of the  
7 petitioning creditors. I recited the circumstances about  
8 that before we started the argument.

9 Mr. Wolk filed a joinder, and he also asked for an  
10 adjournment. Mr. Wolk, I'll hear you briefly, and go ahead  
11 if you want to argue.

12 MR. WOLK: Yes, thank you, Your Honor. First, at  
13 the outset, I'd like to just inform the Court, as well as  
14 the alleged debtors' counsel, that I reached out yesterday  
15 to Mr. Smith to find out if he was intending to file any  
16 papers belatedly or otherwise and to find out if he intended  
17 to attend today's hearing and to find out what he had in  
18 mind.

19 And I did reach him by phone, and I can only  
20 report what he reported to me; I don't have any independent  
21 knowledge as to whether it's true or untrue. But what he  
22 informed me was that he had had a reoccurrence of his  
23 cancer. He told me that he had called the Court and left a  
24 message and had hoped to speak directly when connected to  
25 the Court about his reoccurrence of his cancer. That by

1 virtue of that reoccurrence of the cancer, he had flown to  
2 Chicago and was in the Chicago area staying with his mother  
3 and under her care and to deal with the reoccurrence of his  
4 cancer. And that by virtue of the situation, which he told  
5 me had worsened significantly over the last three or four  
6 days, according to him, that he had been unable because of  
7 that to prepare papers. And he said that by virtue of that,  
8 he would not be able to attend today's hearing.

9 Now, I am only passing on what Mr. Smith told me.  
10 Again, I have no independent basis of knowing whether the  
11 assertions by Mr. Smith to me are accurate or inaccurate,  
12 but I am just passing that on for the record, and I just  
13 wanted to say that because I do believe that it's  
14 potentially relevant depending upon whether or not Mr. Smith  
15 is or is not suffering from a reoccurrence of cancer and  
16 whether that impeded his ability to respond.

17 THE COURT: As I indicated earlier, on February  
18 22nd at 9:51 a.m., Mr. Smith filed a letter on ECF  
19 requesting a five-hour extension to the objection deadline  
20 and stating that, quote, "Counsel is diligently preparing  
21 the opposition, but fears he will be unable to submit a  
22 clean version by noon. Counsel is confident he will be able  
23 to submit a clean version by 5:00 p.m.," closed quote; that  
24 is at ECF No. 30, so we'll just leave the record at that.

25 If you would please, Mr. Wolk, address the issues,

1 and what I see the issues with respect to your joinder as  
2 the paper that you filed does not comply with Bankruptcy  
3 Rule 1003, if you would address that please.

4 MR. WOLK: Okay, first on 1003. The way I  
5 interpret 1003(a) is that the documents transferring the  
6 claim, which I'm happy to file within one minute after this  
7 hearing if Your Honor would like me to, that 1003(a)  
8 requires attaching the transfer of the claim if you're going  
9 to commence the Chapter -- the involuntary petition, and it  
10 says that you have to attach it for the purposes of  
11 commencing the case.

12 And my review of that was I certainly did not  
13 commence this case, and subsequent to this case and pursuant  
14 to independent due diligence on prepetition rulings by the  
15 Fifth Circuit and Tenth Circuit and trying to get up to  
16 speed as quickly as I can about that entire situation, I am  
17 not Mr. Smith. I'm not involved in prior student loan debt  
18 litigation.

19 But upon my review of the Fifth and Tenth Circuit  
20 decisions and based upon my review of Rule 1003, we thought  
21 that we were governed by 1003(b), which says joinder  
22 petitioners after filing. And 1003(b), unlike 1003(a), does  
23 not require the attachment of an assignment for the claim,  
24 although I am happy, independent of Rule 1003, if Your Honor  
25 deems that I'm governed by that, I'm happy to file that

1 immediately. There's no -- I wasn't trying to shroud  
2 anything in mystery. We acted very, very quickly on  
3 Wednesday afternoon once we decided that, at least in our  
4 judgment and having nothing to do with Mr. Smith and  
5 independent of Mr. Smith and his prepetition creditors, that  
6 we believe that Ms. McDaniel is in a situation where, if  
7 you'll allow me to address it, she does, in fact -- I'm  
8 sorry?

9 THE COURT: I don't know who was speaking.  
10 Whoever else is on the line, please mute your phones while  
11 Mr. Wolk is arguing. Please go ahead, Mr. Wolk.

12 MR. WOLK: All right. Thank you, Your Honor. And  
13 so, you know, if allow would allow me, I'm happy to explain  
14 why Public Interest Capital believes that the McDaniel  
15 claim, which it purchased from Ms. McDaniel and we dealt  
16 directly with Ms. McDaniel and, as you will see, I'm happy  
17 to file the assignment, we actually provided a space for Ms.  
18 McDaniel's attorney in the Colorado litigation, Mr. Smith,  
19 to sign.

20 Ms. McDaniel signed, Mr. Smith did not sign, and  
21 we can prove that we've paid Ms. McDaniel handsomely for her  
22 claim based upon our belief that she is now in a strong  
23 position based upon the Tenth Circuit ruling. And the  
24 assignment includes not only assignment of her individual  
25 creditor rights, it also includes an assignment of any class

1 claim or class representative rights that she may have and  
2 be able to establish before a court of competent  
3 jurisdiction.

4 So again, on the assignment, I'm happy to file a  
5 public record right after this hearing, but the reason that  
6 it wasn't done was not to shroud anything in mystery. It's  
7 because we believe we were governed by 1003(b), which did  
8 not require that.

9 THE COURT: Mr. Wolk.

10 MR. WOLK: Yes.

11 THE COURT: When is the first time you spoke with  
12 Mr. Smith about his either -- in anticipation of this filing  
13 or after he filed this involuntary petition?

14 MR. WOLK: Well, I did speak with Mr. Smith before  
15 we purchased the McDaniel claim because we thought he was an  
16 appropriate person to contact as her counsel as to whether  
17 or not that was a claim that would be available for sale,  
18 for transfer, so we did speak with him in connection with  
19 that.

20 THE COURT: And did you at any time speak with Mr.  
21 Smith about his filing an involuntary petition against  
22 Navient, yes or no?

23 MR. WOLK: Oh, absolutely. We contacted Mr. Smith  
24 after he had filed it, yes.

25 THE COURT: Did you speak with Mr. Smith at any

1 time before he filed the involuntary petition about filing  
2 an involuntary petition?

3 MR. WOLK: Yes, I did have -- yes, the answer is  
4 yes. I think within the prior (crosstalk).

5 THE COURT: Stop. When, on how many occasions did  
6 you speak with Mr. Smith about his filing an involuntary  
7 petition before he did so?

8 MR. WOLK: I spoke to him two or three times, and  
9 I recommended to him at that point in time based upon my  
10 knowledge at that point in time that I didn't think it was a  
11 good idea. It is only after several --

12 THE COURT: When did you speak with Mr. Smith for  
13 the first time about his filing an involuntary petition  
14 against Navient?

15 MR. WOLK: When for the first time did I speak  
16 about the concept of a proposed involuntary petition?

17 THE COURT: Yes.

18 MR. WOLK: I would say about -- I would say less  
19 than two weeks before he actually chose to file it. And  
20 during that time period, I told him that I didn't think it  
21 was a good idea based upon what I knew --

22 THE COURT: At any time before he filed the  
23 involuntary petition, did you have any discussion with Mr.  
24 Smith about filing a joinder in the petition?

25 MR. WOLK: No, no, no, no, no; in fact, to the

1       contrary. I told Mr. Smith that I didn't think it was a  
2       good idea, and Mr. Smith told me I need to read all the  
3       cases that had actually already happened, in particular, the  
4       Fifth and Tenth Circuit.

5               And it's only subsequently and after he filed this  
6       involuntary and that I saw that there was, you know,  
7       extensive media coverage that apparently occurred right away  
8       that I then looked at the Fifth and Tenth Circuit decisions  
9       and I was surprised, at least in my independent estimation,  
10      that I did think it established an adjudicated liability.

11             Yes, the amount hasn't been established, and I'm  
12      happy to address that if Your Honor will allow me, but that  
13      the issue of liability of Navient Solutions, LLC with  
14      respect to post-discharge collections under non-Title 4  
15      loans had been addressed and adjudicated as something that  
16      is illegal.

17             THE COURT: And did you discuss with Mr. Smith  
18      whether the three petitioning creditors were non-Title 4  
19      loans?

20             MR. WOLK: Absolutely not, because not only did I  
21      not talk about the specifics of any of his three petitioning  
22      creditors, my just general reaction at that time -- and I'm  
23      being as candid as I can -- was, you know, that's a pretty  
24      serious thing to file an involuntary petition. You better  
25      make sure first and foremost --



1 THE COURT: That's the one thing I agree with you.  
2 That's the one thing I would agree with you about, it's a  
3 very serious thing to file an involuntary petition.

4 MR. WOLK: Yes, absolutely.

5 THE COURT: And it's a very serious thing to file  
6 a joinder in an involuntary petition.

7 MR. WOLK: Yeah, well, can I address that then?

8 THE COURT: Go ahead.

9 MR. WOLK: Okay. Well, I have actually looked at  
10 the Tenth Circuit case and the Fifth Circuit case, and if  
11 Your Honor will allow me even just a brief period of time,  
12 I'd love to submit papers on it because we've done  
13 exhaustive review on this over the last 10 days. And we  
14 believe that it does, in fact, unequivocally establish --  
15 and I'm happy to do it, they're both long opinions, so I'll  
16 have to go into it -- that it is illegal, it is wrongful, it  
17 violates the Federal Bankruptcy Code, it violates the  
18 Federal Fair Debt Collection Practices Act, it violates  
19 principles of restitution, and other theories to collect  
20 money to which you are not entitled.

21 And that the Tenth and Fifth Circuit had ruled  
22 that it is illegal for Navient Solutions, LLC to collect  
23 money after the discharge of a person with respect to non-  
24 Title 4 loans, just like Ms. McDaniel had and just like as  
25 we're doing our best to get up to speed on this, we

1 understand there are many, many people around the nation who  
2 are also in the same situation, so that the issue of  
3 liability -- the issue as to whether or Navient Solutions,  
4 LLC can collect under non-Title 4 loans after a discharge  
5 has been ruled and passed upon specifically by the Tenth and  
6 the Fifth Circuit.

7 And, you know, it's always hard to prognosticate,  
8 but at least in my opinion from the clear wording of those  
9 unanimous Circuit Court decisions, I don't see another  
10 Circuit Court reaching a contrary reported decision on it.  
11 And it is only per our extensive --

12 THE COURT: How does that translate into  
13 insolvency of Navient?

14 MR. WOLK: Okay. So again --

15 THE COURT: Let me ask you, before you answer  
16 that, there's nothing in your joinder addressing the issue  
17 of whether Navient is not generally paying its debts as they  
18 come due; do you agree?

19 MR. WOLK: That is correct, as we quickly put it  
20 together on --

21 THE COURT: And so, you're going to have to rise  
22 or fall with what Mr. Smith said in his petition, because  
23 you provided nothing with respect to an essential element  
24 for an involuntary claim, that the debtor is generally not  
25 paying its debts as they become due. So you're stuck with

1 what Mr. Smith did or didn't say, correct?

2 MR. WOLK: No, no. I would respectfully submit,  
3 Your Honor, two things: first, at the same time that I filed  
4 the joinder -- first I emailed and then filed online an  
5 application under 11 U.S.C. 303(c) -- Federal Bankruptcy  
6 Rule 1003(b) and the reliance upon the only reported  
7 appellate decision on the issue that I'm aware of, the QDOS  
8 case from the Ninth Circuit Bankruptcy Appellate Panel in  
9 2019, indicating that, number one, I believe that it's not  
10 only Public Interest Capital as transferee of Ms. McDaniel's  
11 claim, I believe it is the universe of the entire creditor  
12 body which include all student loan borrowers who had  
13 previously obtained bankruptcy discharges around the nation  
14 with respect to non-Title 4 loans that, by virtue of the  
15 Tenth Circuit ruling and the Fifth Circuit ruling in  
16 McDaniel and Crocker respectively, those previously  
17 discharged student loan borrowers under non-Title 4 loans  
18 are not only creditors as of this moment in time -- and if  
19 Your Honor would allow me even a day or two, I'd love to  
20 brief it.

21 Not only are they creditors, but they are  
22 creditors who claims against Navient by virtue of those  
23 appellate rulings are not subject to a bona fide dispute as  
24 to liability. And the amount of those claims, at a minimum,  
25 are the amount that was wrongfully collected from them, and

1 the amount wrongfully collected from them will be in excess  
2 of the statutorily required amount for an involuntary.

3 So Public Interest Capital seeks to not only be a  
4 joinder creditor in its individual capacity as transferee of  
5 Ms. McDaniel, but also -- and his happy to brief it again on  
6 an expedited basis -- it wishes to --

7 THE COURT: Public interest capital has not been  
8 certified as a class representative in any pending  
9 litigation, correct?

10 MR. WOLK: Correct, correct, correct. But Public  
11 Interest Capital, as the recent transferee of Ms. McDaniel's  
12 claim, wishes and believes it can establish under the  
13 applicable requirements that it should be treated as a  
14 proposed class claim representative in connection with this  
15 involuntary under the case law that exists so far from the  
16 Bankruptcy Court.

17 THE COURT: What case, give me a case -- wait.  
18 Give me a case that says that a party such as Public  
19 Interest Capital can be, on behalf of an unnamed uncertified  
20 class representative in an involuntary case. Just give me  
21 one case that says that.

22 MR. WOLK: I don't believe the issue --

23 THE COURT: Do you have a case that says that?

24 MR. WOLK: There is no case that says I can't do  
25 it. There are cases --

1 THE COURT: All right.

2 MR. WOLK: Your Honor, if I may. There are cases  
3 saying that the purchaser of a claim from Ms. McDaniel,  
4 there are Federal Circuit Court rulings from the Second  
5 Circuit, can assert a class claim as transferee on behalf of  
6 others, so that the Second Circuit has ruled -- and again,  
7 I'm happy to brief this on an expedited basis.

8 THE COURT: What's the case?

9 MR. WOLK: I don't have it at my fingertips. I  
10 can give it to you within 10 -- you know, shortly after this  
11 hearing.

12 THE COURT: No. Mr. Wolk, this is the argument on  
13 the motion to dismiss. You appeared; I'm letting you argue.  
14 You are not able to provide me with any case authority  
15 during this hearing for the position you've asserted. You  
16 said there's a Second Circuit case, but you couldn't tell me  
17 what it is; is that correct?

18 MR. WOLK: No, I respectfully disagree, Your  
19 Honor. I first moved for an adjournment because -- well, 11  
20 U.S.C. 303(b).

21 THE COURT: Mr. Wolk, Mr. Wolk, this is the  
22 hearing on the alleged debtors' motion to dismiss. I've  
23 denied your motion for an adjournment. I'm asking you -- I  
24 gave you a chance to argue, and you've not been able to tell  
25 me the name of a case -- you say there's a Second Circuit

1 case. I'd be interested in whatever circuit, but certainly  
2 the Second Circuit since I'm bound by it. You can't give me  
3 the name of a Second Circuit case to support the proposition  
4 you've asserted.

5 MR. WOLK: And I'm respectfully asking for the  
6 opportunity to have a half hour to submit that case to Your  
7 Honor after this, as we object to having --

8 THE COURT: Why didn't you look before this  
9 hearing?

10 MR. WOLK: Well, I know --

11 THE COURT: Why didn't you look before the  
12 hearing?

13 MR. WOLK: -- it does exist. I just don't have it  
14 right in front of me physically.

15 THE COURT: All right.

16 MR. WOLK: The case does exist.

17 THE COURT: Is there anything you wanted -- Mr.  
18 Wolk, is there anything you want to add briefly?

19 MR. WOLK: Yes, Your Honor. First of all, I'd  
20 like to say that if, in fact, there are a nationwide group  
21 of discharged student loan borrowers under non-Title 4 loans  
22 and my understanding is it's in the aggregate several  
23 billion dollars, then that on its face shows that there's  
24 alleged debtors --

25 THE COURT: Do you think I'm supposed to rely on

1 your statement without any facts?

2 MR. WOLK: No, I mean --

3 THE COURT: You say that there's a group --

4 MR. WOLK: I would like to have the opportunity,  
5 respectfully, even two days since we're just getting  
6 involved in this case to do so and respectfully, 11 U.S.C.  
7 303 indicates in the QDOS case from the Bankruptcy Appellate  
8 Panel, which is the only reported appellate case on this  
9 issue, says that it would violate due process for the  
10 universe of creditors in an involuntary to not be given a  
11 reasonable opportunity to be able to bring to the attention  
12 of the Court their facts, their law as to why those joinder  
13 creditors independent of the petitioning creditors,  
14 independent of whatever defects may exist with respect to  
15 Mr. Smith and that they can rectify that. In that case,  
16 they reversed the Bankruptcy Court's decision to proceed  
17 without allowing that relief.

18 THE COURT: What's the citation of the case?

19 MR. WOLK: That I have. I'm just going to my  
20 computer to pull this up.

21 MR. HUSNICK: Your Honor, it's Mr. Husnick from  
22 Kirkland. It's 607 B.R. 338, I believe.

23 MR. WOLK: That is correct.

24 THE COURT: What's the year? You said it's Ninth  
25 Circuit BAP.

1 MR. HUSNICK: Right.

2 MR. WOLK: Yeah. It's November of 2019, and then  
3 in November 2020, as indicated in my letter application, a  
4 further appeal was taken by the alleged debtor in that case  
5 from the adverse ruling against the alleged debtor who was  
6 trying to deprive the joinder creditors of their opportunity  
7 and the Ninth Circuit dismissed the alleged debtors' appeal  
8 for lack of jurisdiction.

9 THE COURT: All right. Anything else, Mr. Wolk,  
10 before you finish?

11 MR. WOLK: Yes. I'd also like to point out that  
12 on the generally not paying its debts when they become due  
13 issue, nowhere in the motion to dismiss papers does the  
14 alleged debtor say that the alleged debtor itself, the  
15 privately held entity, Navient Solutions, LLC, that it  
16 itself, okay, generally pay their debts as they come do.

17 Instead, what they do is they define the alleged  
18 debtor by reference to it non-debtor parent and an array of  
19 other non-debtor entities, then calls them the company and  
20 then proceeds to say that the company, according to them,  
21 can pay their debts when they become due.

22 And so, I would say that on the fact of the motion  
23 to dismiss, it is not specifically disputed by Navient  
24 Solutions, LLC that that specific debtor entity itself can  
25 actually pay its debts when they become due, and that they



1        tried to meet that issue by reference to non-debtor entities  
2        who are not the subject of the involuntary, who are not the  
3        subject of the joinder, and that with all due respect -- and  
4        Navient may be trying to give the impression that the  
5        alleged debtor can pay its debts when that, in fact, is not  
6        true and they don't even make an unequivocal assertion that  
7        the alleged debtor itself, divorced from all these other  
8        non-debtor entities, has the ability to actually make  
9        payments to the student loan borrowers who have been  
10       discharged under non-Title 4 loans.

11                And by the way, it's the Middle District of  
12       Pennsylvania. The CFPB case against Navient is United  
13       States District Court for the Middle District of  
14       Pennsylvania, not the Eastern District or the Western  
15       District.

16                And the summary judgment motion in that case filed  
17       by the United States government through the Consumer  
18       Financial Protection Bureau seeks summary judgment after  
19       multiple years of extensive factual discovery saying that  
20       after all that fact finding, Navient owes the CFPB on behalf  
21       of the federal government over \$4 billion. And that is  
22       also, I believe, a relevant issue because, although there's  
23       no ruling yet, per se, if in fact the basis for the summary  
24       judgment ruling is well founded, I believe that also shows  
25       that Navient Solutions, LLC, not any of the other non-debtor

1 entities, non-debtor parent, cannot pay its debts to the  
2 federal government, cannot pay it's --

3 THE COURT: Mr. Wolk, I'm giving you five more  
4 minutes and then you're cut off, so make your remaining  
5 argument in the next five minutes.

6 MR. WOLK: Okay. Well, I think first, it's very  
7 important that an involuntary petition is designed for the  
8 benefit of the entire creditor class. All right? Although  
9 Mr. Smith and his petitioning creditors started this case --  
10 and at a point in time where I didn't even think it was  
11 appropriate based upon what I knew at that time -- upon  
12 further due diligence and looking into the actual decisions  
13 that exist prepetition, I think that an involuntary is  
14 perfectly appropriate because you have discharged student  
15 loan debtors all over the nation and they are not required,  
16 respectfully -- and I'm happy to brief this issue if given  
17 the chance -- all those student loan debtor borrowers are  
18 not required as their only remedy to go into their  
19 respective local bankruptcy courts, seek to reopen their  
20 cases, and then try to apply the Tenth Circuit and the Fifth  
21 Circuit ruling in those particular cases.

22 The only thing that the United States Supreme  
23 Court addressed in 2019 was that if you sue for contempt of  
24 court damages for violation of a discharge injunction, then  
25 jurisdiction over the contempt of court damages claim must

1 be in the very same court that issued the discharge. But  
2 there are Second Circuit cases -- and again, I'd be happy to  
3 provide the Court with it right after the hearing -- that  
4 say that that doesn't govern the Federal Fair Debt  
5 Collection Practices Act claims, and that that can be  
6 addressed outside of the bankruptcy court in which the  
7 underlying action took place -- the Second Circuit's ruled  
8 on that too; that it would be appropriate to bring other  
9 types of claims under statutory violations or common law  
10 violations in other courts of competent jurisdiction, non-  
11 bankruptcy or bankruptcy.

12 And I believe what's most important and central  
13 here is that student debt borrowers nationwide, who in my  
14 view whose rights have been vindicated by the Tenth and  
15 Fifth Circuit rulings, that they wrongfully paid money --  
16 they were caused by Navient to wrongfully pay money for many  
17 years post-discharge; they should get their money back.  
18 They should get their money back from Navient, whether it's  
19 an FDCPA claim, a contempt of court bankruptcy discharge  
20 claim, a restitution claim or otherwise.

21 My understanding is that aggregate amount is at  
22 least several billion, not even including the federal  
23 government's \$4-plus billion dollar claim; that's on summary  
24 judgment after several years of fact finding from Navient,  
25 which is pending. And according to what I've seen, Navient

1 Solutions, LLC -- I'm not talking about its non-debtor  
2 parent or any other non-debtor entities -- that those  
3 student loan borrowers or the federal government are not  
4 going to be able to collect from Navient Solutions, LLC  
5 because Navient Solutions, LLC, from everything that I've  
6 seen, they don't have the money to pay them.

7 And I do note that in the consolidated accounting  
8 filed by the parent -- publicly by the parent, the parent  
9 says on respect to it, Navient Solutions, LLC and all other  
10 entities, there are no reserves -- no reserves by Navient  
11 Solutions, LLC for those several billion dollars in student  
12 loan borrower wrongful discharge collection claims. Nothing  
13 for the \$4 billion-plus claim of the federal government  
14 after several years of fact discovery on its pending summary  
15 judgment motion.

16 And that's the only, quote, "litigation reserve"  
17 that even exists is solely with respect to a separate \$22  
18 million claim that the federal government independently has  
19 in connection with an administrative proceeding against  
20 Navient, but nothing for non-administrative actually pending  
21 litigation proceedings by the federal government, by  
22 multiple state attorneys' general who have also been suing  
23 Navient around the country on pending claims, not the  
24 student loan borrowers nationally who under the Tenth and  
25 Fifth Circuit rulings are entitled to their money back, and

1 my understanding that's several billion dollars.

2 And nowhere in their motion to dismiss papers,  
3 regardless of any issues involving Mr. Smith and any defects  
4 that may or may not exist with respect to that and any  
5 defects that may or may not exist with respect to my joinder  
6 and doing the best I can at the eleventh hour, nowhere does  
7 the alleged debtor say that the alleged debtor itself can  
8 pay any of those claims or even assert --

9 THE COURT: All right, your time is up.

10 MR. WOLK: -- the alleged debtor itself --

11 THE COURT: Mr. Wolk, your time is up. Mr.  
12 Husnick, any reply?

13 MR. HUSNICK: Yes, Your Honor, thank you. I'll be  
14 very brief. I listened very closely to what Mr. Wolk was  
15 saying, and unfortunately for Mr. Wolk, the louder you get,  
16 it doesn't make your argument more credible. His argument  
17 is not credible.

18 THE COURT: Let's just address the argument.

19 MR. HUSNICK: Yeah. Your Honor, what he said in  
20 the joinder, let's look at what they filed. At the top of  
21 page 2 of their joinder, they said it was an adjudicated  
22 liability. That's wrong. There is no adjudicated liability  
23 of the alleged debtor.

24 MR. WOLK: Yes, there is, and I apologize.

25 THE COURT: Mr. Wolk.

1 MR. WOLK: Yes, there is.

2 THE COURT: Mr. Wolk, I'm going to hold you in  
3 contempt the next time you do that. Do you understand?

4 MR. WOLK: I do, Your Honor.

5 THE COURT: Respond Mr. Wolk.

6 MR. WOLK: I do, Your Honor.

7 THE COURT: I do not want to hear from you again.  
8 Go ahead, Mr. Husnick.

9 MR. HUSNICK: Second, Your Honor, on top of page  
10 3, the alleged debtor that is non-contingent, and then he  
11 uses the word liquidated. That term has very significant  
12 meaning in the bankruptcy world. He admitted in his  
13 argument -- we don't have a running transcript here, but he  
14 admitted that it's an unliquidated claim. That is a  
15 requirement to satisfy 303(b), it is a requirement. You  
16 can't file an involuntary on the bases that they filed.

17 But on top of that, Your Honor, McDaniels, let's  
18 talk about the McDaniel's case one more time because it's  
19 incredibly important; it only addressed 523(a)(8)(A)(ii).  
20 We also have the ability to argue that that loan, that loan  
21 to the McDaniels' borrower is dischargeable under 523 -- I'm  
22 sorry -- is non-dischargeable under 523(a)(8)(B) and  
23 523(a)(8)(A); that's an open issue in the litigation. All  
24 those other issues, I summarized earlier, are open issues in  
25 the litigation. It's the petitioners' burden, Your Honor,

1 to show in the pleading, on the face of the pleading; they  
2 can't do that.

3 On 303(h), Your Honor, again, Mr. Wolk misstates  
4 the law. It's the petitioners' burden to make the  
5 assertion. That's the A&J Quality case, 377 B.R. 460. They  
6 did nothing. You can't just react on the call and throw out  
7 reckless accusations about solvency, insolvency; that's not  
8 enough.

9 Your Honor, this is a strike suit, and it needs to  
10 be dismissed. There's nothing in the petition that supports  
11 an involuntary petition of Navient. Thank you.

12 THE COURT: All right.

13 MR. WOLK: Your Honor, may I have one minute to  
14 respond to his newest --

15 THE COURT: No, you may not. No, you may not.  
16 Mr. Wolk, you may not.

17 All right. Pending before the Court is the motion  
18 to dismiss the involuntary petition filed by three  
19 petitioning creditors; the motion was filed as ECF Docket  
20 No. 14. The order scheduling today's hearing and requiring  
21 a response, ECF 19, was filed on February 18, 2021, and your  
22 response had to be filed by February 22nd at 12:00 noon.

23 I recited out the outset that no response was  
24 filed, an extension of time was given, and no response was  
25 filed. And the purported joinder in the involuntary

1 petition was filed by Mr. Wolk, who requested an  
2 adjournment, which was denied.

3 While no opposition was timely filed or was filed  
4 at all to the motion to dismiss, the Court has nevertheless  
5 had extensive argument today addressing the issues  
6 surrounding the involuntary petition that was filed.

7 An order will be entered dismissing the  
8 involuntary petition because the claims asserted of the  
9 three petitioning creditors are subject to bona fide  
10 disputes as to liability and amount.

11 And with respect to the joinder, which purports to  
12 assert an assigned claim, does not provide details to show  
13 that it involves a claim that is not disputed as to  
14 liability or amount.

15 Additionally -- and that was under 303(b) -- under  
16 303(h), the involuntary petition does not provide any non-  
17 conclusory allegation that the alleged debtor is not  
18 generally -- is generally not paying its debts as they come  
19 due.

20 Additionally, the involuntary petition is  
21 dismissed under Section 305(a) based on abstention. This is  
22 a case where multiple lawsuits are pending, including an  
23 appeal pending the Second Circuit on direct appeal from the  
24 Eastern District. There are many issues that are going to  
25 have to be resolved before there are creditors with claims



1 that are not disputed as to liability or amount. The proper  
2 place for that litigation to proceed at this stage is in the  
3 courts that are currently grappling with the issues, and not  
4 jumping the que, if you will, by filing this ill-informed  
5 involuntary petition.

6 The issues raised by Crocker and McDaniel are  
7 serious issues, and it may well be that many bankruptcy  
8 debtors or past bankruptcy debtors have valid claims that  
9 they can assert that their student loans were discharged in  
10 their cases and that money was improperly collected  
11 thereafter by Navient Solutions. But it is a far cry to say  
12 that liability is not disputed, and the amount of any  
13 liability disputed; it clearly is.

14 Whether Navient is able to satisfy the ultimate  
15 obligations that may be determined or whether it ultimately  
16 must proceed in a bankruptcy case remains to be seen. This  
17 is not the case to jump the que with the effect that all  
18 litigation against Navient Solutions, if an order for relief  
19 is entered, will be subject to the automatic stay. The  
20 appropriate place for these issues to get resolved are the  
21 courts across the country in which those issues are pending.  
22 No class action has been certified at this stage.

23 Class certification proceedings are pending in the  
24 Crocker case, but not with respect to a nationwide class and  
25 no class has been certified. McDaniel is not a class

1 action, and the Second Circuit may address the issue in the  
2 pending appeal before it, whether a nationwide class can be  
3 asserted in Homaïdan case, but that has not yet been  
4 decided.

5 Mr. Husnick, prepare a brief order granting the  
6 motion to dismiss for the reasons stated, and indicating  
7 that an opinion will follow in due course further  
8 elaborating on the reasons I've given today, but it's time  
9 for this case to be dismissed and litigation elsewhere can  
10 proceed unaffected by this involuntary Chapter 11 case.  
11 That's going to be the Court's ruling.

12 So a brief order, as I say, should grant the  
13 motion to dismiss can indicate it's on 303(b), 303(h), and  
14 also for extension under Section 305(a), and with an opinion  
15 to follow.

16 MR. HUSNICK: Thank you, Your Honor.

17 THE COURT: We're adjourned.

18 MR. HUSNICK: Your Honor, I have one question, if  
19 I may?

20 THE COURT: Yes, go ahead quickly.

21 MR. HUSNICK: Yes, very quickly. You did not  
22 mention the damages. Would we be able to include a  
23 reservation for that issue?

24 THE COURT: As I think you indicated earlier, Mr.  
25 Husnick, in the PPG case, I did not deal with the PPG case,

1 I did not deal with any damages that might be recoverable  
2 when an involuntary is dismissed, and I'm not going to do  
3 that now either. I'm not foreclosing you from bringing a  
4 properly supported application to do that, but I'm not  
5 ruling on that at this stage.

6 MR. HUSNICK: Thank you, Your Honor.

7 THE COURT: That's exactly what I did in PPG.

8 MR. HUSNICK: Thank you.

9 THE COURT: We're adjourned.

10 (Whereupon these proceedings were concluded at  
11 11:41 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

A handwritten signature in dark ink, reading "Sonya M. Ledanski Hyde". The signature is written in a cursive, flowing style.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: March 1, 2021

[& - accurate]

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